CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 870

R. E. COLLINS, JOHN C. CORBETT AND FRED B. STEWART, ET AL., APPELLANTS,

vs.

YOSEMITE PARK AND CURRY CO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

FILED MARCH 15, 1938.

BLANK

PAGE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 870

R. E. COLLINS, JOHN C. CORBETT AND FRED B. STEWART, ET AL., APPELLANTS,

vs.

YOSEMITE PARK AND CURRY CO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

INDEX.

	Original	Print
Record from D. C. U. S., Northern District of California	1	1
Bill of complaint	1	1
Exhibit "A"—Agreement between United States of America and Yosemite Park and Curry Co., October 1, 1932	8	8
Motion for interlocutory injunction	34	27
Order setting hearing on motion for interlocutory injunction	37	28
Motion to dismiss	39	30
Stipulation for submission	41	30
Decision of Court	43	31
Findings of fact and conclusions of law	44	31
Final decree	51	37
Opinion, Roche, J.	54	39
Petition for appeal (omitted in printing)	61	
Assignments of error (omitted in printing)	62	
Order allowing appeal, etc.	65	50
Bond on appeal (omitted in printing)	67	
Precipe for transcript of record. (omitted in printing)	68	
Clerk's certificate (omitted in printing)	75	
Citation and service (omitted in printing)	76	
Statement of points to be relied upon and designation as to record	77	51
Stipulation in re printing of record	80	53

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 7, 1938.

BLANK

PAGE

[fol. 1]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 4165-R

YOSEMITE PARK AND CURRY CO., a Corporation, Complainant,

vs.

R. E. COLLINS, JOHN C. CORBETT, FRED E. STEWART, RAY EDGAR, HARRY B. RILEY and U. S. WEBB, Defendants

BILL OF COMPLAINT FOR INJUNCTION—Filed March 31, 1937

The complainant above-named complains of defendants and each of them and for a first cause of action alleges:

I

The complainant is a corporation organized and existing under the laws of California, having its office and principal place of business in the Northern District of California, [fol. 2] and is engaged in the operation of hotels, stores, transportation services and other business in the Yosemite National Park.

II

Defendants, other than defendant U. S. Webb, are the duly appointed, qualified and acting members of and constitute the Board of Equalization of the State of California, and as such are charged with the administration and enforcement of the Alcoholic Beverage Control Act of the State of California (Cal. Stats. 1935, Chapt. 330). Defendant U. S. Webb is the duly elected, qualified and acting Attorney-General of the State of California, and as such is, under the Constitution and Statutes of the State of California, charged with the duty of enforcing the statutes of said State.

III

Yosemite National Park is a place as to which exclusive jurisdiction was ceded to the United States of America by the State of California, by Chapter 51 of California Statutes of 1919. Said exclusive jurisdiction was accepted by the Congress of the United States by the Act of June 2,

1

1920 (41 Stats. p. 731). Said Yosemite National Park by Act of Congress has been made a part of and within the jurisdiction of the District Court of the United States for the Northern District of California.

IV

Complainant within the limits of said Yosemite National Park is engaged in the operation of hotels, stores, camps, transportation facilities and other places and facilities for the accommodation and entertainment of visitors to said Yosemite National Park under and pursuant to a contract between the complainant and the Secretary of the Interior of the United States of America dated October 1, 1932, a true copy whereof is hereto attached, marked Exhibit "A" and made a part hereof. Under and pursuant to said contract, and with the consent and approval of the Secretary of the Interior of the United States of America, complainant is engaged, within the limits of said Yosemite National Park, in the importation and sale of beer, wines and distilled spirits, hereinafter referred to as alcoholic beverages. Complainant now owns, possesses and holds within said Yosemite National Park alcoholic beverages purchased by it outside of the State of California of the cost and fair value of more than $3,000, all of which said alcoholic beverages have been acquired by complainant and are held by it solely for the purpose of sale to persons within said Yosemite National Park. In the ordinary course of its business it is necessary for the complainant from time [fol. 3] to time to purchase such alcoholic beverages, which beverages are consigned to complainant in Yosemite National Park, and there delivered to complainant. Delivery of such beverages requires transportation through the State of California. Pursuant to instructions of the Secretary of the Interior of the United States of America, complainant has not applied for and does not now possess any license or permit from the Board of Equalization of the State of California for the importation or sale of alcoholic beverages in Yosemite National Park.

V

Defendants and each of them contend and assert that said Alcoholic Beverage Control Act of the State of California applies to complainant's operations within said Yose-

mite National Park; that complainant is obligated under said Act to apply for permits for the importation and sale of such beverages; that it is subject to the conditions and limitations of said Act in respect of the character of license which can be held by any one person; that it is obligated to pay the fees and taxes imposed by said Act and is subject to the penalties thereof for the possession and sale of said beverages without compliance with the provisions of said Act. Defendants and each of them threaten to and will, unless enjoined: Enter upon the premises of complainant, seize the alcoholic beverages of complainant thereon, and cause the same to be destroyed or sold as unlawfully possessed liquor, under purported authority of said Alcoholic Beverage Control Act; seize such beverages in the course of transportation from points outside the State of California to complainant in Yosemite National Park and deprive the complainant of the use thereof; demand the rendition of reports and the keeping of accounts in the form prescribed by the Board of Equalization; and institute divers civil and criminal proceedings against complainant for alleged violation of the Alcoholic Beverage Control Act because of the failure of complainant to comply therewith.

VI

Complainant under its said contract with the Secretary of the Interior is charged with the duty of rendering all necessary facilities and services for the accommodation of visitors to the Yosemite National Park and in the conduct of said business it is necessary that complainant obtain alcoholic beverages from points without the State of California and sell the same at retail to patrons of its hotels, camps, stores and other facilities for consumption on or off the premises where sold. Said Alcoholic Beverage Control Act of California prohibits the issuing of importer's licenses to persons holding retail on-sale licenses, and vice versa. The enforcement of said Act would completely prevent performance by complainant of its said contract [fol. 4] with the Secretary of the Interior of the United States of America. Under said statute as interpreted by the courts of the State of California, wholesalers of alcoholic beverages within the State of California may not lawfully sell alcoholic beverages to complainant in the absence of a holding by complainant of a retailer's license therefor,

and complainant in the performance of its said contract with the Secretary of the Interior is unable to obtain alcoholic beverages other than from suppliers located outside the State of California. The seizure of complainant's property as threatened by defendants would prevent performance by complainant of its said contract with the Secretary of the Interior of the United States of America.

VII

The Secretary of the Interior, under and pursuant to said contract, has approved prices to be charged by complainant for alcoholic beverages sold and dispensed by it in Yosemite National Park which contain no allowance for the taxes imposed by the Alcoholic Beverage Control Act of California. Said Secretary of the Interior, through the Director of the National Park Service, has instructed complainant to refuse to apply for any license under said Alcoholic Beverage Control Act of California, or to pay any of the taxes imposed by said Act, and has notified complainant that the payment of any such licenses or taxes will not be allowed as an operating expense of complainant under its said contract.

VIII

Said Yosemite National Park is a place within the exclusive jurisdiction of the United States of America and the State of California is without power or jurisdiction to regulate or control the sale of alcoholic beverages therein; if said Alcoholic Beverage Control Act be construed as purporting to regulate business of complainant in said Yosemite National Park, the same is unconstitutional and void in that it is beyond the power and jurisdiction of the State of California to legislate in respect of complainant's business or affairs in said Yosemite National Park, and the enforcement thereof will deprive complainant of its property without due process of law.

IX

Said Alcoholic Beverage Control Act provides that violations thereof shall constitute public offenses and complainant will be subject to divers and numerous fines and penalties, and its officers, agents and employees subject to imprisonment and fine, and each separate act of violation

of said Act is specified as a separate and independent offense; unless the enforcement of said Act by defendants be enjoined as herein prayed, the complainant and its officers, [fol. 5] agents and employees will be subject to repeated prosecutions, and complainant has no speedy, adequate or any remedy at law.

X

This action arises under the Constitution and laws of the United States, to wit, under subdivision 17 of Section 8 of Article I, under Section 2 of Article IV, and under the Fourteenth Amendment to the Constitution, and under the Act of June 2, 1920 (41 Stats. 731) and amendments thereto, and the jurisdiction in this court is granted by Section 41(1) of Title 28 of the United States Code and by Section 77 of Title 16 of said United States Code.

And for a further and separate count and cause of action complainant alleges:

I

Complainant incorporates herein by reference each and all of the allegations contained in paragraphs I to X, inclusive, of its first cause of action herein stated.

II

An actual controversy exists between complainant and defendants in respect of the following matters:

Complainant contends that Yosemite National Park is within the exclusive jurisdiction of the United States of America by virtue of Chapter 51 of the Statutes of California of 1919, and the acceptance of such jurisdiction and exercise thereof by the Act of Congress of the United States of America of June 2, 1920 (41 Stats. 1931 and as amended), and that by virtue of such exclusive jurisdiction of the United States of America complainant in the conduct of its business in operating hotels, camps, stores and other facilities for the accommodation of visitors to Yosemite National Park under and pursuant to its contract with the Secretary of the Interior of the United States, is not subject to the provisions of the Alcoholic Beverage Control Act of the State of California, is not obligated to obtain any license thereunder, to pay any license fees or excise taxes thereby imposed, to render reports or keep accounts as

therein provided, and is not in any respect subject to any of the provisions of said Act in respect of transactions by complainant within said Yosemite National Park, and that it is, without any such license or permit, entitled to import into Yosemite National Park from points outside the State of California alcoholic beverages and to possess, sell and dispose of the same within said Yosemite National Park free of any interference from defendants, their officers, agents or employees, and without incurring any of the penalties or being subject to any of the regulations prescribed by said Act.

[fol. 6] Defendants contend that despite the statutes referred to in the preceding paragraph the United States is without constitutional power to exercise exclusive jurisdiction in said Yosemite National Park; that said statutes, insofar as they purport to grant to, accept or exercise such exclusive jurisdiction, are unconstitutional, and that complainant in the conduct of its said business in Yosemite National Park is nevertheless subject to all the terms and provisions of said Alcoholic Beverage Control Act and the rules and regulations prescribed thereunder, and is subject to the fines and penalties in said Act provided for failure to comply therewith in respect of such transactions.

Wherefore, complainant prays:

(1) That defendants and each of them, and the officers, agents and employees of said defendants and each of them, be restrained and enjoined

(a) from entering upon the premises of complainant, from examining any books, records or accounts of complainant respecting the importation, purchase or sale of alcoholic beverages, from seizing or threatening to seize any alcoholic beverages in possession of complainant, and from interfering with the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite National Park;

(b) from seizing, impeding or interfering with any shipments of alcoholic beverages consigned to complainant in Yosemite National Park having origin in points outside of the State of California;

(c) from instituting any actions or proceedings in any court of law or equity for violations or alleged violations

of said Alcoholic Beverage Control Act in respect of the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite National Park;

(d) from requiring or demanding the rendition of reports by complainant in respect of such importation, possession or sale of said alcoholic beverages within said Yosemite National Park;

(e) from enforcing in any manner within the limits of Yosemite National Park, or in respect of transactions within said Park, the Alcoholic Beverage Control Act of the State of California;

(2) That pending final hearing and determination of this action this Court grant an interlocutory injunction restraining the defendants and each of them and their respective officers, agents and employees, from doing or causing to be done any of the acts or things as to which a permanent injunction is heretofore applied for.

[fol. 7] (3) That this court enter a declaratory judgment declaring and determining that the Alcoholic Beverage Control Act of California does not apply within the limits of Yosemite National Park; that the complainant in the conduct of its business in said Yosemite National Park is not obliged to comply with said Act, to apply for or obtain any license thereunder, to pay any fees or taxes thereby imposed, to render reports or keep accounts as therein prescribed, and that complainant may lawfully and without let or hindrance of defendants or any of them import into Yosemite National Park from points outside the State of California and there possess, use, sell and dispose of alcoholic beverages, subject to the control of the Secretary of the Interior of the United States, without compliance with any of the provisions or requirements of said Alcoholic Beverage Control Act;

(4) For such other and further relief as may be meet and proper in the premises, and for costs herein incurred.

Yosemite Park and Curry Co., by Don Tresidder, Its President, Complainant.

Duly sworn to by Don Tresidder. Jurat omitted in printing.

[fol. 8] EXHIBIT "A" TO BILL OF COMPLAINT

This Agreement made and entered into this 1st day of October, 1932, by and between John H. Edwards, Assistant Secretary of the Interior, for and on behalf of the United States of America, Party of the first part, hereinafter designated as the "Secretary", and Yosemite Park and Curry Company, a corporation organized and existing under the laws of the State of California, by Don Tresidder, its President, party of the second part, hereinafter designated as the "Company".

Witnesseth:

That Whereas, said Company under an agreement entered into with the United States through its Secretary of the Interior under date of February 4, 1926, as supplemented by agreement dated July 9, 1929, has established and does now maintain and operate in the Yosemite National Park, hotels, camps, transportation service, merchandise stores, photographic service, and related accommodations and conveniences for the benefit of visitors thereto, and

Whereas, pursuant to plans of the government for better taking care of visitors in the national parks by the establishment of more modern and extended facilities therein looking for sometime to the future, outlined by the Secretary of the Interior to the various public utility operators at a conference held in Washington, D. C., on December 6 and 7, 1929, the said Company has formulated plans for improved and extended services in the Yosemite National Park, including the provision of similar services in the recent addition to the park under proclamation of the President dated August 13, 1932, and is ready and willing to conduct its operations in said park on the basis of said [fol. 9] improved and extended facilities, subject to the extension of the term of its operating contract for the full period authorized in law, namely twenty (20) years, in order to justify the total expenditure contemplated therefor, and

Whereas, the said Company has submitted to said Secretary a detailed five year program covering the various improvements and extensions contemplated and which meet with the approval of the Secretary, and

Whereas, the Secretary believes it to be in the interest of the United States and of the public visiting the park to

grant an extension of the contract term by the execution of a new contract as applied for by the Company in order that improved and extended accommodations and conveniences, according to said program, may be installed and operated in the park, and

Whereas, said Company has tendered its contract dated February 4, 1926, and supplemental agreement dated July 9, 1929, for cancellation and has made application for a new contract in lieu thereof covering a period of twenty (20) years from October 1, 1932, in consideration of the continued operation in the park and addition thereto on the basis of the said five year program of improved and extended facilities,

Now, Therefore, pursuant to the authority conferred by the Act of Congress approved October 1, 1890, (26 Stat. 650), and the Act of Congress approved August 25, 1916 (39 Stat. 535), and the acts supplemental thereto and amendatory thereof, the said parties have covenanted and agreed and by these presents do covenant and agree to and with each other, in consideration of the execution of this agreement and the performance thereof and the enjoyment of the same, to the cancellation of said agreement dated February 4, 1926, and the supplemental agreement dated July 9, 1929, and the same are hereby cancelled, and each [fol. 10] does hereby release the other from all claims, demands and reckonings thereunder, except as to compensation or franchise fees that may be due the United States at the date of the execution hereof, and for the same considerations the parties do further agree as follows:

Article I. The said Secretary hereby authorizes and empowers the Company for and during the term of twenty (20) years from October 1, 1932, under such tariff or schedule of charges as is provided in Subdivision (e) of Article VI hereof:

(a) To establish, maintain and operate a general hotel and camping business in the Yosemite National Park for the complete accommodation and entertainment of tourists and others, including hotels, chalets, inns and camps, etc.

(b) To install and operate all facilities and conveniences in connection with the operation of a general hotel and camping business for the comfort and convenience of

guests and others, including laundries, barber shops, Turkish and other baths, swimming pools, and bathhouses;

(c) To provide facilities for skating, sleighing, skiing, and other winter sports, and to operate and maintain ice skating rinks, tennis courts, golf links, pool and billiard halls, bowling alleys, and such other amusements and sports for the accommodation of tourists in the park as may be hereafter agreed upon between the parties hereto;

(d) When specifically authorized by the Secretary in writing, to establish and maintain hothouses and gardens at such points as may be designated by the Superintendent of the Park for the purpose of propagating flowers and raising vegetables, etc., to be used in supplying the services required under this contract;

[fol. 11] (e) To sell in the hotels, chalets, inns, camps, and at such other locations as may be approved by the Secretary, any and all supplies, commodities and articles not at any time or times objected to by the said Secretary, including newspapers, magazines, periodicals, guide books, maps, and other descriptive literature of the Yosemite National Park, souvenirs, paintings, photographs, photographic supplies and equipment, postcards, curios, confectionery, ice cream, soda water, soft drinks, tobacco, and other smokers supplies, and other supplies or conveniences for tourists, and to public- a magazine or newspaper or both for the information of park visitors;

(f) To operate and conduct a general photographic business including the taking of still and motion pictures of views, groups and individuals, the development and printing and sale of same; the general manufacture of any and all kinds of photographs and curios and the sale of same; development of films and the making of prints off same as offered by the public, park operators or permittees or their employees; the renting and repair of kodaks, cameras and general photographic equipment; and the exhibition of motion pictures and/or the giving of lectures for an admission charge to either or both.

Article II. The Secretary further authorizes and empowers the Company for and during the said period of twenty years;

(a) To establish, maintain and operate a general transportation service, using therefor automobiles, automobile trucks, or other proper and satisfactory means of conveyance for the accommodation of tourists, and the transportation of freight and mail to and through said park over the roads now open or which may hereafter be opened for [fol. 12] the use of motor-propelled or horse-drawn vehicles;

(b) To operate and maintain on the floor of Yosemite Valley automobile trucks or other satisfactory means of conveyance for sightseeing and express service purposes;

(c) To establish, maintain and operate in said park trail transportation facilities and furnish such other service as may be considered necessary for the transportation of tourists over the roads, trails, and bridle paths of said park;

(d) To establish, maintain and operate a lift, tramway or elevator between the floor of Yosemite Valley and the rim of said Valley in the vicinity of Glacier Point, and similar and other forms of aerial and/or incline transportation at other places in the park, if and when approved by the Secretary; Provided, However, that the said Secretary reserves the right to make special stipulations regarding compensation to the United States for this privilege; and provided that this privilege if and when exercised with the approval of the said Secretary shall be in accordance with detailed plans providing for the protection of the landscape of the Yosemite Valley from any impairment whatsoever;

(e) To maintain for hire rowboats and other water transportation facilities;

(f) To conduct in said park a general livery business including the hiring out of animals and conveyances for the transportation of tourists and others in and around the Yosemite Valley and other parts of the Yosemite National Park, and the care and stabling of animals and conveyances of other parties;

(g) To establish, maintain and operate in said park garages, gasoline and oil stations, blacksmith shops, ma- [fol. 13] chine shops, stables, corrals, hangars, aerodromes, landing fields, boat houses, boat landings, and other serv-

ices, including towing service, considered necessary by the Secretary in the operation of the transportation facilities authorized herein, and for the accommodation of tourists and other travel in and through the park;

(h) To establish, maintain and operate a general air transportation and sightseeing service in, into, through, or about the park, and to use such facilities for this purpose as may be approved by the Secretary, but this privilege shall be exercised only, if and when the Secretary shall determine that such service should be furnished for the accommodation and convenience of the public;

Article III. The Secretary further authorizes and empowers the Company for and during the said period of twenty years to establish, maintain and operate in said park general merchandise stores, and to sell therein groceries, fresh and smoked meats, food supplies of all kinds, including dairy products, dry goods, clothing, shoes, hardware, notions, tobacco supplies, toilet articles, patent medicines, and any and all other kinds of goods, wares and other merchandise not objected to by the said Secretary; to keep for renting tents, camping outfits, fishing tackle, sleds, skates, skis, footwarmers, etc., and to conduct watch and shoe repairing, clothing and laundry agencies: Provided, However, that the right to sell prescriptive drugs and hospital supplies is reserved for the officially authorized medical service in the park.

Article IV. The Secretary hereby leases to the Company for the purposes of this contract and for the term of twenty years aforesaid such pieces and parcels of land in said [fol. 14] park as may be agreed to and designated by the said Secretary in the exercise of his judgment and discretion from time to time for the erection of buildings, corrals, and other structures or improvements necessary or desirable in the proper exercise of the privilege hereby granted; To Have and to Hold the same for and during the said period subject to the following conditions:

(a) A plat and description of each site which the Company is authorized to use under this contract shall be filed in the Department of the Interior within three months of the date of the execution hereof, and shall be attached to and made a part of this contract;

(b) Additional sites the use of which may at any time be leased the Company hereunder shall be surveyed by and at the expense of the Company and a plat of each site, together with a description of the land when completed shall be attached to and form a part of this contract;

(c) The Secretary shall have the right at all times to enter upon and construct, maintain and operate roads, trails, paths, bridges, automobile parking spaces, toilet houses and other sanitary facilities, electric, telephone, telegraph, water and sewer lines over any and all of the pieces and parcels of land the use of which is granted hereunder, but not so as to destroy or interfere with the structures, buildings, and appurtenances theretofore constructed by the Company thereon;

(d) Plans, specifications, and locations of all buildings, structures or inclosures established under this contract, and all alterations therein or additions thereto shall be subject to the prior approval of the Secretary;

(e) In addition to the pieces or parcels of land leased as aforesaid, the Company shall be entitled to the exclusive [fol. 15] occupancy during the pleasure of the Secretary, of such additional areas as may be reasonably required by the Company, from time to time, for the exercise and enjoyment of the rights and privileges granted to it hereby, and as shall be approved by the Secretary. A plat and description of each such area shall be filed with the Department of the Interior and when approved by the Secretary the Company shall have, until such approval is revoked by the Secretary in writing, the right to the exclusive occupancy and enjoyment of the same; Subject, However, to the rights of the Secretary specified in sub-paragraph (c) above.

Article V. The Secretary authorizes and empowers the Company during the said period of twenty years:

(a) Under the approval of the Park Superintendent first obtained and under his supervision, to quarry sand and stone, and use dead, fallen or ripe and mature timber in the park, so far as may be necessary and as marked by the Superintendent of the park, for the construction, alteration, repair or maintenance of buildings and other structures and improvements, and dead or fallen timber for

fuel and other purposes incident to the operation of its hotels, chalets, inns, camps, etc., transportation service, and other services authorized by this contract; Provided, that all slashings must be cleared and burned to the satisfaction of the Superintendent of the park; And Provided Further that, where supervision for the utilization of such park resources is necessary, a charge to cover cost of such supervision may be made;

(b) To lay, in accordance with the plans and specifications approved by the Secretary, water supply, drains and sewer pipes, conduits and mains necessary for a proper [fol. 16] and adequate water supply, drainage and sewer systems necessary for the enjoyment of the privileges herein granted;

(c) To procure from the Secretary, at reasonable rates to be hereafter determined, water, electric lights, telephone and telegraph services at and between its hotels, chalets, inns, camps, stables, garages, etc., Provided, However, that should any such service not be satisfactory or sufficient the Company may, with the approval of the Secretary and under such regulations as may be prescribed by him, provide the same at its own expense subject to the following conditions;

(1) That all plans, appliances, and machinery to be used in connection with the privileges granted under this paragraph, as well as the location and installation thereof, must be first approved by the Secretary.

(2) That all official business of the Government over telephone or telegraph lines constructed or owned by the Company in the park shall be free.

Any surplus electric power generated under this authority and not required by the Company may be disposed of by it to other parties on the terms and conditions to be hereafter agreed upon.

(d) To keep and graze, on areas where available and as may be approved for this purpose by the Secretary, such horses and mules as may be necessary to supply and accommodate its guests and employees in the park, but no such animals may be kept or sold for the purposes of trade or commerce.

Article VI. The Company hereby covenants and agrees:

[fol. 17] (a) That it accepts and will observe the terms of this contract, and will establish, maintain and operate said hotels, chalets, inns, camps, etc., the said transportation service, the said merchandise stores, and every service incident thereto with such plant, personnel, animals and equipment, goods and commodities, and in such manner, as the Secretary shall deem in every respect satisfactory and designed to promote the object for which the park was created and established; that it will exercise th privileges hereby granted to it to use the waters of the park and to graze stock and take sand, stone and timber from the park to such extent only as may be necessary for the purposes of this contract, and so as not to mar or destroy the beauty of the natural features of the park; that in all its business relations with the public, its officers and employees will observe a strict and constant impartiality as to rates, service, and in all other respects; that there shall be no preference given on its transportation lines to any passenger over others except that based upon priority of payment or reservations; but nothing contained herein shall be construed as prohibiting special arrangements being made directly with the person or persons going through the park to cover unusual and extraordinary demands for service by special contract, subject always to the control of the Secretary;

(b) That compensation to the Secretary for the franchises and leases herein granted, covering each fiscal year, for the first ten years of the contract, commencing for the first year with the beginning of operations hereunder, and thereafter with the beginning of each fiscal year of the Company as regularly established by said Company, shall be based upon and ascertained according to the following rules:

[fol. 18] 1. The Company shall pay in cash to the Secretary, annually on or before the last day of the fiscal year of the Company, the sum of Five Thousand Dollars ($5000.00), and this payment shall be regarded as an operating expense of the Company for the fiscal year in which said payment is due.

2. The Company shall be allowed, and is hereby granted annually a priority of net profits amounting to six per

cent (6%) of the value of its investment as hereinafter defined, and it shall be allowed to declare dividends to its stockholders to the cumulative amount of this priority before making any further payment to the Secretary.

If the amount of said annual priority shall not have been earned in any year through the net profits, the allowance shall be cumulative and shall be added from the net profits of succeeding years, but neither the earned priority nor the amount unearned shall bear interest.

3. The investment of the Company upon which the aforesaid annual priority shall be computed is held to mean the entire equity of the stockholders of all classes, (namely the amount by which the assets, including expenses properly chargeable to future operations, exceed the sum of the liabilities and the customary reserves necessary to provide for accrued expenses and shrinkages of the past), as at the beginning of the fiscal year, and in addition thereto all amounts actually paid into the treasury of the Company as additional contributions of capital or assessments between the beginning of said fiscal year and the first day of July next succeeding, both inclusive but less the amount of any dividends paid to stockholders between the beginning [fol. 19] of said fiscal year and the first day of July next succeeding, both inclusive.

4. The stockholders' equity as at the beginning of operations hereunder shall be determined by the Secretary from a balance sheet to be submitted by the Company showing its assets and liabilities and capital at that date, accompanied by a schedule describing the items sufficiently in detail to establish clearly their identity and respective values. After this balance sheet shall have been approved and the stockholders' equity determined by the Secretary, the values of the assets shall not be increased excepting through actual additions of value derived from contributions of capital, from borrowings, or from earnings, excepting with the written consent of the Secretary.

5. The net gain, or net loss, for each fiscal year of the Company, by which the stockholders' equity may be increased or decreased, shall be held to mean the difference between the total income of the Company and the total expense, defined as follows: Total income shall comprise gains derived from all sources both within and without Yosemite

National Park, including interest received or accrued, gains realized from disposal of property, recovery of values previously charged as expenses or losses, and all other gains or increments realized. Total expenses shall comprise all operating, administrative and selling expenses both within and without Yosemite National Park, such as are ordinarily incurred in operation of similar lines of business, and shall specifically include maintenance or repairs to property, depreciation of property at reasonable rates based on the expected useful life of said property but without reference to the duration of this franchise; losses incurred by fire, [fol. 20] storm or other damage in excess of insurance recovered thereon; losses in excess of provisions for depreciation incurred by abandonment or disuse of buildings or property, or losses on sale of property, in compliance with requirements or consent of the Secretary; interest paid or accrued as a legal liability, including interest on bonds or debentures; insurance expenses, whether actually paid out in premiums or credited to a reserve liability account by the Company for self insurance; Provided that in the latter case the approval of the Secretary shall first be obtained both as to the nature of the insurance and the rates used; charges to operating expenses credited to a reserve account for the purpose of providing for overhauling and reconditioning of motor vehicles equipment after the close of the fiscal year; and taxes of all kinds paid or legally accrued, including estimated income taxes credited to reserves at the end of the fiscal year, Provided, However, that the right is reserved to the Secretary, in case of dispute as to any item or items of income and expense, to determine whether or not said item or items not herein specifically defined shall be included in determining the net gain or net loss for the purposes of this contract, and his decision in the premises shall be final.

6. If, after the amount of the cumulative priority shall have been paid as dividends to the stockholders, any further dividends shall be paid to the stockholders out of net profits accrued since the beginning of operations hereunder, then there shall be paid in cash to the Secretary simultaneously with such distribution an amount equal to twenty-five per cent (25%) of such further dividends so paid to the stockholders. Payments to the Secretary under this [fol. 21] clause shall be regarded as operating expenses of

the Company for the fiscal year in which said payments are respectively due.

It is expressly understood that during the first ten fiscal years of operations under this contract there shall be no further compensation due or payable to the Secretary other than the payments hereinbefore provided for, namely: (a) an annual payment of Five Thousand Dollars ($5000.00); and (b) twenty-five per cent (25%) of the amount of cash dividends paid to stockholders in excess of the amount of the cumulative six per cent (6%) priority; and that at the expiration of the tenth fiscal year there shall be no contingent liability for further compensation other than amounts found to be due and payable under the aforementioned provision; and that after the expiration of the tenth fiscal year of the Company's operations under this contract there shall be no restriction upon the distribution of the profits theretofore accumulated, whether or not the same may be in excess of the cumulative amount of the six per cent priority.

7. In order that there may be a final determination of the amounts paid as compensation during the first ten years of operations under this contract, the Company agrees that within six months after the expiration of the tenth fiscal year of operations there shall be determined, in such manner as the Secretary may prescribe, the amount of the stockholders' equity, as hereinbefore described, existing at the close of the Company's tenth fiscal year, and the amount, if any of the priority remaining unearned; and the amount of compensation, if any, due at that time to the Secretary on account of distributions to stockholders paid in excess of the cumulative priority. This determination shall be [fol. 22] considered final, both by the Company and by the Secretary, unless evidence of fraud or gross error shall thereafter be discovered which, in the opinion of the Secretary, is sufficient to require a redetermination.

(c) After the expiration of the first ten fiscal years of operations under this contract compensation to the Secretary for the franchises and leases herein granted covering each fiscal year for the remaining period of this contract, commencing with the beginning of the eleventh fiscal year of the Company's operations under this contract, and thereafter with the beginning of each fiscal year, shall be based

upon and ascertained according to the following plan, to wit:

1. The Company shall be allowed, and it is hereby granted annually for distribution to its stockholders before any compensation, except as provided in sub-paragraph (c) 4 hereunder, shall be due or payable to the Secretary, a priority of net profits amounting to six per cent (6%) of the value of its investment as hereinbefore defined for the purpose of computing the priority during the first ten years, and it shall be allowed to declare dividends to its stockholders to the cumulative amount of this priority before making any further payment to the Secretary. If the amount of said annual priority shall not have been earned in any year through the net profits, the allowance shall be cumulative and shall be added from the net profits of succeeding years, but neither the earned priority nor the amount unearned, shall bear interest. Such portion of the cumulative amount of the priority accrued during the first ten fiscal years of the Company's operations under this contract as shall remain unearned at the close of the tenth fiscal year, shall be carried forward and made a part of the cumulative [fol. 23] priority during the remaining period of this contract.

2. After such six per cent annual priority, with cumulations shall have accrued to the Company from the aggregate of net profits or gains for the portion of the second ten-year period then elapsed, less the aggregate of net losses during said period, then, if there remain at the close of any fiscal year of the Company any additional net profits or gains as defined in paragraph (b) 5 herein, an amount equal to 22½% of such additional net profits or gains, less the aggregate of sums paid to the Secretary hereunder during said period, shall be paid in cash to the Secretary on or before ninety days after the close of said fiscal year as compensation for the franchises herein granted for the fiscal year last elapsed.

It is agreed that during the second ten-year period of this contract, no sums shall be due or payable to the Secretary except as shall be determined by the following computation:

At the end of each fiscal year of said period the net profits of that and all preceding years shall be determined (by de-

ducting from the total of the net profits of all years in which there have been net profits the total of the net losses of all years in which there have been net losses), and similarly the aggregate of the allowable 6% priorities of that and all preceding years during said period shall also be determined. From the aggregate of net profits as so determined there shall be deducted the aggregate of allowable 6% priorities as so determined together with the unearned priority, if any, carried forward from the first ten-year period of this contract as heretofore provided. From the balance of net profits, if any, remaining after such deduc-
[fol. 24] tions, there shall be paid to the Secretary a sum equal to 22½% thereof, less the aggregate of all sums paid to the Secretary hereunder during the preceding years of the second ten-year period.

It is the intent of this agreement that the Secretary shall not receive during the second ten-year period as compensation hereunder, a total sum in excess of 22½% of the aggregate net profits during said period, remaining after deducting therefrom the stockholders' priority for said period, and the unearned priority, if any, carried forward from the first ten-year period, except the minimum annual guarantee of $5000.00 provided for in sub-paragraph (c) 4 hereunder.

3. The liability for such payment shall be deducted from the stockholders' equity as at the close of the fiscal year just ended, but shall not be considered an expense for purposes of computing the net profits hereunder.

4. It is expressly understood that such payments, based upon the amount of annual net profits or gains in excess of the cumulative priority, including the annual guarantee to the Secretary of $5000.00, shall be the full amount of compensation payable to the Secretary, and that if such payments shall have been made there shall exist no restriction or condition arising from the provisions of this contract upon the distribution of the remaining net profits; it being further understood that it is the intent of this agreement that the annual compensation to the Secretary during the second ten-year period shall in no fiscal year of the Company be less than $5000.00.

(d) That this contract is accepted by the Company with
[fol. 25] the knowledge that the park is intended by Congress to be preserved in its natural state, and that all private

interests shall be excluded from it, except so far as may be necessary for the accommodation of the public; that it will not use the premises leased, or any of the rights or privileges herein granted, except, and to such extent only, as may be needed and intended to be used in good faith by it in carrying out the true intent and meaning of this contract; and that it will faithfully keep, observe, enforce and obey, and require its employees and all persons under its control to keep, observe, enforce and obey, each and every provision in this contract or in any Act of Congress or any rule, order or regulation concerning the park, its use, care, management or government, or anything in it;

(e) That no charges shall be demanded or received from any person by or on behalf of the Company for any accommodation or service furnished or rendered by it or for any thing or article sold by it, except in accordance with a tariff or schedule approved by the Secretary, who shall have the power, from time to time, to make such alterations and modifications in such schedule or tariff as he may see fit, not inconsistent with a reasonable profit on the part of the Company.

(f) That its employees who come in direct contact with the public shall so far as practicable wear a uniform or badge by which they may be known and distinguished as the servants and employees of said Company; and that it will not employ or retain in its services in the park, in any capacity, or permit to remain upon any of the premises, or within any building therein mentioned or provided for, any [fol. 26] person declared by the Secretary to be unfit for such employment or otherwise objectionable;

(g) That it will maintain such accounting records as may be prescribed by the Secretary and will submit to him as soon as possible after the 31st day of November of each year an annual report, under oath, giving such details of its organization, management and operations in the park under this contract as may be prescribed by the Secretary, and such other reports as may be required from time to time by said Secretary, who shall have the right to verify all such reports from the books, correspondence, memoranda, and other records of the company;

(h) That it will furnish accommodations free of charge to employees of the Department of the Interior visiting the

park on official business relating to Yosemite National Park, and to the executive officers of the park away from their regularly assigned stations, but only upon certification by or presentation of proper credentials signed by the Secretary of the Interior, or by the Director of the National Park Service or his duly authorized representative in charge of the park; but payments made by such employees in the absence of such evidence shall be without prejudice to a refund upon later submission thereof;

(i) That it will make all reasonable arrangements necessary with the concessioner authorized by the Secretary to maintain hospital and medical service in the Yosemite National Park, for the rendition of such medical and surgical treatment as may be required by its employees in the park;

(j) That before the Secretary shall be bound by this agreement the Company shall furnish a joint and several [fol. 27] bond duly executed to the United States of America, with a satisfactory surety company to be approved by the Secretary and in such sum or amount as may be deemed by the Secretary necessary for the full protection of the Government conditioned for the faithful performance of this agreement in all its particulars by the Company.

Article VII. In case of non-payment for thirty days after it is due of the compensation to the Government as provided for herein, or in case of any other default or failure on the part of the Company to observe the provisions of this contract, the Secretary may, after sixty days' notice to the Company of the default or failure and refusal to remedy such default, declare this contract forfeited and re-enter the premises without any legal process whatever; Provided that before forfeiture is declared for such failure or default, except in the case of nonpayment of compensation to the Government hereinbefore referred to, the Company shall be given a full and fair hearing on the charges before an officer and at a place designated for that purpose by the Secretary, and it shall be entitled to twenty days' notice of the time and place of such hearing, but the Secretary alone shall have the power to determine what shall constitute a failure or default hereunder and his decision in the matter shall be final and conclusive; Provided Further that as security for the faithful performance by the Company of all its obligations under this contract and the payment to the Secretary of all

damage or claims that may result from the Company's failure to observe such obligations, the Secretary shall have at all times the first lien on all the property of the Company, and no provision herein for any specific remedy shall be [fol. 28] construed as a waiver of any other lawful remedy that would otherwise be available to the Secretary.

Article VIII. It is further agreed that if, on the expiration of this contract by limitation of time, the premises shall be leased to some one other than the Company, the latter shall be given an opportunity to be reimbursed for the reasonable value of such of its buildings, fixtures, stock equipment and other property thereon as the Secretary may, by an inspection made within six months prior to such termination, determine to be appropriate for use on said premises and in enhancement of the value thereof for hotel, inn, chalet or camp, transportation or store purposes, together with the cost plus transportation charges of all merchantable supplies on hand at the time of transfer. The value of such property shall then be ascertained by a board of three appraisers appointed as follows: at least ninety days before the expiration of this contract, each of the parties hereto shall choose one appraiser, and the two so selected shall choose a third. If they do not, within thirty days of their designation, agree upon the third appraiser, such third appraiser shall be selected by the Secretary. This board, or a majority thereof, shall within thirty days from the designation of the third member, and after an inspection of the property to be appraised and the taking of such testimony as may be adduced by the parties in interest, report their conclusions to the Secretary, who may approve, set aside or modify the same or order a new appraisal, as he may see fit. The value of such buildings and property when determined by the Secretary, whose decision in the premises shall be final, shall be paid, at the time and in the manner directed by him, to the Company hereunder by the person [fol. 29] to whom the premises are to be leased; Provided that nothing herein shall be construed as creating a claim against the United States, or shall prevent the Secretary from leasing or subletting said property and the improvements thereon in such manner and upon such terms as may be necessary for the full protection of the interests of the Government, or shall delay the surrender of the premises with all buildings, fixtures, and appurtenances thereon upon

any termination of this contract, or shall in any manner charge the Government for the use of such buildings or other property.

Article IX. It is further understood and agreed that it is the intent and purpose of this franchise contract to confer upon the Company the first preferential right to provide the facilities, accommodations and services herein authorized, and said preferential right is hereby conferred and not an exclusive or monopolistic right; and upon the request or demand of the Secretary, the said Company will, within the time fixed by said Secretary, provide new or additional facilities, accommodations or services as may be considered necessary by said Secretary for the accommodation and convenience of the public; Provided, However, that if the Company doubts the timeliness or the reasonableness of said requirement for new facilities by the Secretary, the said Company shall have sixty (60) days in which to prepare, present and argue its case, and the Secretary may, in his discretion, order hearings to be held, at such times and at such places as he may designate, for the purpose of taking testimony relating to the timeliness or reasonableness of said requirement, but the decision of the Secretary in the premises shall be final and conclusive; and Provided Further that failure, neglect or refusal by the Company [fol. 30] to comply with said requirement after such hearing and decision will render this franchise subject to forfeiture under the provisions of Article VII hereof, except that there shall be no further hearings; or the Secretary may, in his discretion, authorize other individuals, partnerships, associations or corporations to provide such facilities, accommodations and services in which event the Company shall have the option to withdraw from this contract or the operation of the particular facilities affected by said decision of the Secretary upon reasonable notice to the Secretary sufficient to permit other arrangements for the continued operation of said facilities.

Article X. No transfer or assignment of this contract or lease or any part thereof made pursuant thereto shall be valid or recognized by the Secretary unless such assignment is first approved in writing by said Secretary, and no mortgages shall be executed, or any bonds, shares of stock, or other evidences of interest in or indebtedness upon

the rights, properties, and franchises of the Company shall be issued without prior authorization in each case being obtained from the said Secretary in writing.

Article XI. It is further understood and agreed that, as far as applicable, the provisions of this agreement shall apply to any enlargement or addition to the park by the Government.

Article XII. It is further understood and agreed that the exercise of the privileges conferred by this contract shall be subject to the laws of Congress governing the park and the rules and regulations promulgated thereunder, whether now in force or hereafter enacted or provided; that wherever in this contract the Secretary of the Interior is [fol. 31] referred to, the term shall include his duly authorized representative; that in all cases where rights or privileges are granted herein in general or indefinite terms, the extent of the use of such rights or privileges by the Company shall be determined by the Secretary; and that the mention of specific restrictions, conditions and stipulations herein shall not be construed as in any way impairing the general powers of supervision, regulation and control of the Secretary, which are hereby reserved over all the activities of the Company hereunder in the Yosemite National Park.

Article XIII. No Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified and during his continuance in office, and no officer, agent, or employee of the Department of the Interior shall be admitted to any share of any part of this contract or derive any benefit which may arise therefrom, and the provision of Section 3741 of the Revised Statutes of the United States and Sections 114, 115 and 116 of the Codification of the Penal Laws of the United States, approved March 1, 1909, relating to contracts, shall enter into and form a part of this agreement, so far as the same may be applicable.

Article XIV. It is further understood and agreed that all of the foregoing provisions shall apply to the recent addition to the park under proclamation of the President dated August 13, 1932, but in addition thereto the following shall also apply, the particular specification whereof shall

not be deemed to limit in any way the application of the foregoing provisions to said addition;

[fol. 32] (a) The Company shall establish, maintain and operate in the aforesaid addition to the park so long as the Secretary shall require, a general hotel and camping business for the complete accommodation and entertainment of the public, conducting in connection therewith all facilities and conveniences reasonably required, including garages, grocery stores, laundries, etc. and generally maintaining and conducting the activities heretofore maintained and conducted therein.

(b) In connection with said hotel and camping business and related facilities and conveniences, the Company shall be entitled to occupy and enjoy all of the buildings, structures, improvements and fenced grazing and farming areas located in said area necessary for the purpose of providing accommodations for the public, and shall maintain and repair the same; Provided, However, that it shall not be required to restore, replace, or repair any building, structure or improvement that shall be destroyed or damaged by fire, storm, act of God or other casualty, no matter how caused, unless the same shall be required for the proper service of the public, in which case the expenditure of the Company therefor shall be an asset of the Company and shall be treated in the same manner as the expenditures mentioned in sub-paragraph (c) hereof; and Provided Further that whenever any building, structure or other improvement shall become dangerous or unnecessary or unsuitable for further use by the Company, and the Secretary shall so declare, then the Government, at its own expense, may demolish or abandon the said building, structure or other improvement.

(c) Additions to or replacements of, in whole or in part, [fol. 33] of said buildings, corrals and other structures, improvements and facilities shall become a part of the assets of the said Company, shall be included in the investment of the Company upon which the annual priority hereinbefore referred to shall be computed, shall be valued under Article VIII and shall be treated in the same manner thereunder as all other buildings and improvements constructed by the Company.

In Witness Whereof, the said parties have hereunto subscribed their names and affixed their seals (in quintuple) the day, month and year aforesaid.

John H. Edwards, Secretary of the Interior. Yosemite Park and Curry Co., by Don Tresidder, President. (Seal.)

Attest: H. H. Hoss, Secretary.

[File endorsement omitted.]

[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR INTERLOCUTORY INJUNCTION—Filed March 31, 1937

To the Honorable, the Judges of the District Court of the United States, in and for the Northern District of California, Southern Division:

Yosemite Park and Curry Co., a corporation, complainant herein, upon the verified bill of complaint filed herein on the 31st day of March, 1937, and upon all the papers and pleadings on file in the above-entitled matter, hereby makes application and moves:

(1) For an order enjoining and restraining, pending the final decision in this action and until the further order [fol. 35] of this Court, the defendants R. E. Collins, John C. Corbett, Fred E. Stewart, Ray Edgar, Harry B. Riley and U. S. Webb, their officers, attorneys, agents, servants and employees, and any and every other person acting or claiming or assuming to act under or by virtue of any purported authority of the Alcoholic Beverage Control Act of the State of California,

(a) from entering upon the premises of complainant, from examining any books, records or accounts of complainant respecting the importation, purchase or sale of alcoholic beverages, from seizing or threatening to seize any alcoholic beverages in possession of complainant, and from interfering with the importation, possession or sale

of said alcoholic beverages by the complainant within the limits of said Yosemite National Park;

(b) from seizing, impeding or interfering with any shipments of alcoholic beverages consigned to complainant in Yosemite National Park having origin in points outside of the State of California;

(c) from instituting any actions or proceedings in any court of law or equity for violations or alleged violations of said Alcoholic Beverage Control Act in respect of the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite National Park;

(d) from requiring or demanding the rendition of reports by complainant in respect of such importation, possession or sale of said alcoholic beverages within said Yosemite National Park;

(e) from enforcing in any manner within the limits of [fol. 36] Yosemite National Park, or in respect of transactions within said Park, the Alcoholic Beverage Control Act of the State of California;

(2) For such other and further orders and relief as the Court shall deem just and proper in the premises.

Dated: San Francisco, California, March 31, 1937.

Herman Phleger, Maurice E. Harrison, Howard J. Finn, Gregory A. Harrison, James S. Moore, Jr., Theodore R. Meyer, Solicitors for Complainant.

[File endorsement omitted.]

[fol. 37] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTING HEARING ON MOTION FOR INTERLOCUTORY INJUNCTION—Filed March 31, 1937

Complainant herein having applied for an interlocutory injunction in the terms prayed for in its verified bill of complaint, and it appearing that the case is one in which such motion should be made and heard pursuant to the provi-

sions of Title 28, Section 380, United States Code (formerly Section 266, Judicial Code);

Now, Therefore, it is Hereby Ordered that the defendants R. E. Collins, John C. Corbett, Fred E. Stewart, Ray Edgar, Harry B. Riley and U. S. Webb appear before the [fol. 38] undersigned Judge of this District Court, and a Circuit Judge of the United States, and a District Judge of the United States (or another Circuit Judge of the United States), who shall sit to hear the matter of the issuance of said interlocutory injunction, on the 12th day of April, 1937, at 2:00 o'clock P. M., in the court room of the United States District Court aforesaid, at the United States Post Office Building at 7th and Mission Streets, in the City and County of San Francisco, State of California, and that said defendants and each of them shall then and there show cause, if any they have or either of them has, why the interlocutory injunction prayed for in said bill should not issue.

It is Further Ordered that a copy of this order, certified under the hand of the Clerk and the seal of this Court, and a copy of said bill of complaint, together with copies of any affidavits in support of said bill of complaint and of said motion for interlocutory injunction, filed with the Clerk of this Court with said bill, shall be served not less than five days before said date of hearing upon said defendants R. E. Collins, John C. Corbett, Fred E. Stewart, Ray Edgar, Harry B. Riley and U. S. Webb, and upon the Honorable Frank F. Merriam, Governor of the State of California.

It is Further Ordered that, at the time and place set as aforesaid for the hearing of said motion for an interlocutory injunction, said motion shall be proceeded with in accordance with Title 28, Section 380, United States Code (formerly Section 266, Judicial Code) and the rules of practice of this Court.

Done in said Northern District of California on this 31st day of March, 1937.

Michael J. Roche, Judge.

[File endorsement omitted.]

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed April 12, 1937

Come now the defendants in the above-entitled cause and move the Court to dismiss the bill of complaint filed in this cause for the reason that the said bill of complaint does not state any matter of equity entitling the plaintiff to the relief prayed for, nor are the facts sufficient to entitle the plaintiff to any relief against the defendants or either of them.

[fol. 40] Wherefore, the defendants pray the judgment of the Court whether they shall further answer, and that they be dismissed with their costs herein.

Dated April 10, 1937.

U. S. Webb, Attorney General of the State of California; Seibert L. Sefton, Deputy Attorney General, Attorneys for Defendants.

Copy received and service acknowledged this the 10th day of April, 1937.

Herman Phleger, Maurice E. Harrison, Howard J. Finn, Gregory A. Harrison, James S. Moore, Jr., Theodore R. Meyer, Attorneys for Complainant.

[File endorsement omitted.]

[fol. 41] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION FOR SUBMISSION—Filed November 18, 1937

It is Hereby Stipulated by and between the parties to the above-entitled action that the same may be submitted to the above-entitled Court, constituted in the manner provided in Section 266 of the Judicial Code (Title 28, U. S. C., Sec. 380), for final hearing and decision upon complainant's bill of complaint and defendants' motion to dismiss the same.

[fol. 42] Dated, San Francisco, California. October 28th, 1937.

Herman Phleger, Maurice E. Harrison, Howard J. Finn, Gregory A. Harrison, James S. Moore, Jr., Theodore R. Meyer, Solicitors for Complainant. U. S. Webb, Attorney General, by Seibert L. Sefton Deputy, Solicitors for Defendant.

[File endorsement omitted.]

[fol. 43] In United States District Court

[Title omitted]

Decision—October 25, 1937

Defendants' motion to dismiss the complaint herein, heretofore heard and submitted, being now fully considered, and the Court having filed its written Opinion thereon, it is, in accordance with said opinion, Ordered that said motion to dismiss the complaint be and the same is hereby denied and that the motion for the issuance of a temporary injunction be and the same is hereby granted. Further ordered that the plaintiff prepare and file proposed findings of fact, conclusions of law, and a decree, pursuant to the Rules of this Court.

[fol. 44] In United States District Court

[Title omitted]

Findings of Fact and Conclusions of Law—Filed November 18, 1937

The above-entitled case coming on regularly to be heard before the Court, constituted as provided by Section 266 of the Judicial Code (Title 28, U. S. C., Sec. 380), Hon. Curtis D. Wilbur, Circuit Judge, Hon. A. F. St. Sure, District Judge, and Hon. Michael J. Roche, District Judge, presiding, and by stipulation of the parties having been [fol. 45] submitted for final decision upon the verified bill of complaint and defendants' motion to dismiss the same,

and having been argued by counsel, and the Court thereafter having filed its written opinion on motion for preliminary injunction, and the Court being fully advised in the premises, now makes the following

FINDINGS OF FACT

I

The opinion filed herein on October 25, 1937, is hereby referred to and by reference made a part of these findings.

II

Complainant is a corporation organized and existing under the laws of California.

III

Defendants, other than defendant U. S. Webb, are the duly appointed, qualified and acting members of and constitute the Board of Equalization of the State of California, and as such are charged with the administration and enforcement of the Alcoholic Beverage Control Act of the State of California (Cal. Stats. 1935, Chapt. 330). Defendant U. S. Webb is the duly elected, qualified and acting Attorney-General of the State of California, and as such is, under the Constitution and Statutes of the State of California, charged with the duty of enforcing the statutes of said State.

IV

Complainant is engaged in the sale of wine, beer and spirit-ous liquors (herein called "alcoholic beverages") at various hotels, camps and stores, all of which are located within the limits of Yosemite National Park, in the Northern District of California. The greater part of said prem- [fol. 46] ises are within the area described in the Act of June 11, 1906 (34 Stats. 831). Complainant is not engaged in the sale of alcoholic beverages except within the limits of Yosemite National Park.

V

Complainant operates in Yosemite National Park hotels, stores and camps and also other facilities for the accom-

modation of visitors to said Park under a contract dated October 1, 1932, between complainant and the Secretary of the Interior of the United States of America, a copy of which contract is attached to the bill of complaint herein as Exhibit "A" thereto. Complainant's sales of alcoholic beverages within Yosemite National Park are made pursuant to said contract and under the control of the Secretary and at prices fixed or approved by him as provided in said contract.

VI

In connection with the sale of alcoholic beverages within Yosemite National Park, complainant in the ordinary course of its business imports from places outside the State of California beer, wine and distilled spirits, and owns, possesses and holds for sale within Yosemite National Park such beverages purchased by it outside the State of California. Under instructions of the Secretary of the Interior complainant has not applied for and does not now possess any license or permit from the Board of Equalization of the State of California for the purchase or sale of alcoholic beverages in Yosemite National Park.

VII

Defendants claim and assert that complainant is subject to the terms and conditions of said Alcoholic Beverage Control Act and threaten to and will, unless restrained, [fol. 47] enter upon the premises occupied by the complainant in Yosemite National Park, and seize the alcoholic beverages of complainant therein and cause the same to be sold as unlawfully possessed liquor, under purported authority of said Alcoholic Beverage Control Act; seize such beverages in the course of transportation from points outside the State of California to complainant in Yosemite National Park; demand the rendition of reports and the keeping of accounts in the form prescribed by the Board of Equalization of the State of California, and will institute divers civil and criminal proceedings against complainant for alleged violation of the Alcoholic Beverage Control Act of California.

VIII

The seizure by defendants of alcoholic beverages held and possessed by complainant within Yosemite National Park

and the interference by defendants with the importation from points outside California into Yosemite National Park of alcoholic beverages consigned to complainant therein would interfere with and prevent compliance by complainant with the terms of its contract with the Secretary of the Interior of the United States of America.

IX

The prices fixed or approved by the Secretary of the Interior charged by complainant for alcoholic beverages sold and dispensed in Yosemite National Park contain no allowance for taxes imposed by the Alcoholic Beverage Control Act of California. The Secretary of the Interior, through the Director of the National Park Service, has notified complainant that licenses or taxes paid under said Act will not be allowed as an operating expense of com- [fol. 48] plainant for the purpose of computing payments required by said contract to be made to the United States.

X

The value of the alcoholic beverages owned and possessed by complainant within Yosemite National Park, seizure of which is threatened by defendants, exceeds the sum of $3,000.

XI

Complainant has no plain, speedy or adequate remedy at law.

XII

Complainant will suffer irreparable injury by prevention of performance of its contract with the Secretary of the Interior unless defendants are restrained from attempting to enforce said Alcoholic Beverage Control Act within Yosemite National Park and from interfering with the importation by complainant of alcoholic beverages into said Yosemite National Park.

And as

Conclusions of Law

therefrom:

I

Yosemite National Park is a place within the exclusive jurisdiction of the United States.

II

The Alcoholic Beverage Control Act of California does not apply within Yosemite National Park.

III

Within the area described in the Act of June 11, 1906, jurisdiction was ceded by California to the United States [fol. 49] without any reservation whatsoever.

IV

Within the remainder of said Yosemite National Park the powers of taxation reserved to California by the act of cession and saved to the State by the act of June 2, 1920 (41 Stats. 731) did not include the power to impose or collect the taxes purported to be levied by the Alcoholic Beverage Control Act of California.

V

Complainant is entitled to an injunction restraining defendants and each of them, their officers, agents and employees,

(a) from entering upon the premises of complainant, from examining any books, records or accounts of complainant respecting the importation, purchase or sale of alcoholic beverages, from seizing or threatening to seize any alcoholic beverages in possession of complainant, and from interfering with the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite National Park;

(b) from seizing, impeding or interfering with any shipments of alcoholic beverages consigned to complainant in Yosemite National Park having origin in points outside of the State of California;

(c) from instituting any actions or proceedings in any court of law or equity for violations or alleged violations of said Alcoholic Beverage Control Act in respect of the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite National Park;

[fol. 50] (d) from requiring or demanding the rendition of reports by complainant in respect of such importation, possession or sale of said alcoholic beverages within said Yosemite National Park;

(e) from enforcing in any manner within the limits of Yosemite National Park, or in respect of transactions within said Park, the Alcoholic Beverage Control Act of the State of California.

VI

Complainant is entitled to a judgment declaring and determining that the Alcoholic Beverage Control Act of California does not apply within the limits of Yosemite National Park; that the complainant in the conduct of its business in said Yosemite National Park is not obliged to comply with said Act, to apply for or obtain any license thereunder, to pay any fees or taxes thereby imposed, to render reports or keep accounts as therein prescribed, and that complainant may lawfully and without let or hindrance of defendants or any of them import into Yosemite National Park from points outside the State of California and there possess, use, sell and dispose of alcoholic beverages, subject to the control of the Secretary of the Interior of the United States, without compliance with any of the provisions or requirements of said Alcoholic Beverage Control Act.

Dated November 9th, 1937.

Curtis D. Wilbur, United States Circuit Judge. Michal J. Roche, United States District Judge. A. F. St. Sure, United States District Judge.

Approved as to form as provided in Rule 22.

U. S. Webb, Attorney General, by Seibert L. Sefton, Deputy, Solicitors for Defendants.

[File endorsement omitted.]

[fol. 51] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 4165-R

YOSEMITE PARK AND CURRY CO., a Corporation, Complainant,

vs.

R. E. COLLINS, JOHN C. CORBETT, FRED E. STEWART, RAY EDGAR, HARRY B. RILEY and U. S. WEBB, Defendants

FINAL DECREE—Filed November 18, 1937

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, the Court having heretofore made and caused to be filed its written Findings of Fact and Conclusions of Law, it was and is ordered, adjudged and decreed as follows, viz:

I

That the Alcoholic Beverage Control Act of the State of California (Cal. Stats. 1935, Chapt. 330, and amendments [fol. 52] thereto) is not applicable within the limits of Yosemite National Park.

II

That defendants R. E. Collins, John C. Corbett, Fred E. Stewart, Ray Edgar and Harry B. Riley, as members of and constituting the Board of Equalization of the State of California, and defendant U. S. Webb, Attorney-General of the State of California, and their respective successors in office, and their officers, agents, attorneys, servants, and employees, and every other person acting, or claiming or assuming to act, under or by virtue of the authority of the defendants, or any of them, be and they are, and each of them is, hereby permanently enjoined and restrained

(a) from entering upon the premises of complainant, from examining any books, records or accounts of complainant respecting the importation, purchase or sale of alcoholic beverages, from seizing or threatening to seize any alcoholic beverages in possession of complainant, and from interfering with the importation, possession or sale

of said alcoholic beverages by the complainant within the limits of said Yosemite National Park;

(b) from seizing, impeding or interfering with any shipments of alcoholic beverages consigned to complainant in Yosemite National Park having origin in points outside of the State of California;

(c) from instituting any actions or proceedings in any court of law or equity for violations or alleged violations of said Alcoholic Beverage Control Act in respect of the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite Na-
[fol. 53] tional Park;

(d) from requiring or demanding the rendition of reports by complainant in respect of such importation, possession or sale of said alcoholic beverages within said Yosemite National Park;

(e) from enforcing in any manner within the limits of Yosemite National Park, or in respect of transactions within said Park, the Alcoholic Beverage Control Act of the State of California.

III

That complainant have and recover judgment against defendants for its costs of suit herein incurred, taxed in the sum of — Dollars.

Dated Nov. 17, 1937.

Curtis D. Wilbur, United States Circuit Judge.
Michal J. Roche, United States District Judge.
A. F. St. Sure, United States District Judge.

Approved as to form as provided in Rule 22.

U. S. Webb, Attorney General, by Seibert L. Sefton, Deputy, Solicitors for Defendants.

[File endorsement omitted.]

[fol. 54] In United States District Court, Northern District of California, Southern Division

In Equity. No. 4165

Yosemite Park and Curry Co., a Corporation, Plaintiff,

v.

R. E. Collins et al. (State Board of Equalization of the State of California), Defendants

Before Wilbur, Circuit Judge, and St. Sure and Roche, District Judges

Opinion

Roche, District Judge:

The question in this case deals with the applicability of the "Alcoholic Beverage Control Act of the State of California" [1] in all its taxing, licensing and policing provisions, to the Yosemite National Park located within the territorial limits of California.

The answer depends upon the respective jurisdictions of the State and the United States over the Park, and this in turn revolves around the methods by which, and the extent to which, the federal government may acquire jurisdiction of lands ceded to it by states for national park purposes. The Supreme Court in Arlington v. Fant, 278 U. S. 439, 454, characterized the question as novel, saying:

"This issue may in the future become a subject of constitutional controversy, because some twenty or more parks have been created by Congress, in a number of which exclusive jurisdiction over the land has been conferred by act of cession of the State. We do not find it necessary, however, now to examine this question."

Briefly, the Beverage Control Act is a complete liquor regulation measure for California.[1] It provides for various licensing fees of importers, retailers and wholesalers. It has a schedule of excise taxes applicable to the sale of different types of liquors and wines and beers. It has definite

[1] 1935 Cal. Stats. Ch. 330.

provisions for the areas within which liquor may be sold. It gives state officers the right to prescribe the accounting and bookkeeping systems which dealers in liquors must use. It enables the State Board of Equalization, which administers the Act, to require liquor dealers to obtain the endorsement of a certain number of property owners in the area where the dealers are to be licensed, and to furnish bond for security of tax collection. It has also many other features which make it extremely comprehensive and which give the State Board of Equalization complete regulatory power.

Plaintiff, the Yosemite Park and Curry Company, is seeking to enjoin the State Board of Equalization and the State Attorney General from enforcing the Beverage Control Act within the Park. Plaintiff is engaged in the operation of hotels, camps, stores, transportation facilities, utilities and other businesses within the Park. There is a contract between the plaintiff and the Secretary of the Interior leasing portions of the Park to plaintiff for a twenty year term. The intent of the contract is to carry out the Congressional desire to make the Park a resort and playground for the benefit of the public (Contract Art. VI(d).). The contract places upon plaintiff the duty of furnishing the aforementioned facilities for the accommodation of visitors in the Park. A part of such duty is the sale of liquors, beers and wines to Park visitors. It is in respect to these alcoholic beverages that the State threatens to take action under its Beverage Control Act. The prices which plaintiff can charge can be established only with the approval of the Secretary of the Interior (Contract Art. VI(e).) Plaintiff is limited to an annual six per cent cumulative return upon its investment (Contract Art. VI(b)2). It must pay to the Secretary of the Interior $5,000 a year as rent for [fol. 55] the first ten years (Contract Art. VI(b)1). If it earns more than six per cent and declares excess dividends, twenty-five per cent of the amount so declared must go to the Secretary of the Interior (Contract Art. VI(b)6). During the second ten years, plaintiff is excused from the $5,000 payments and need only pay twenty-two and one-half per cent of its excess dividends to the Secretary (Contract Art. VI(c)).

Before further detailing the facts of the case, it is necessary to point out that the Park consists of Yosemite Valley

plus a great amount of surrounding territory. The Valley has been the subject of statutory cessions different from the balance of the Park (hereafter called the Park as distinguished from the Valley). We therefore shall consider separately the problems presented by the two cessions.

First

The Valley

All of the area in question, including the entire territory comprising California and many western states, was acquired by the United States from Mexico in 1848 by the Treaty of Guadalupe Hidalgo.[2] California was admitted to statehood in 1850, the United States reserving its proprietary rights to the Valley and other unappropriated public lands,[3] Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525, 50 C. J. 887. The Congress gave the Valley to California in trust for public park and recreational purposes June 30, 1864,[4] thus relinquishing the previously reserved federal proprietary rights. In 1891 California enacted a law[5] reading:

"The State * * * hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may hereafter be ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this State and the service of civil process therein."

By Act of March 3, 1905, the California Legislature did:

"* * * hereby recede and regrant unto the United States of America * * * the Yosemite Valley * * * and the State of California does hereby relinquish unto the United States of America and resign the trusts created and granted * * *" for public park purposes.

---

[2] 9 Stats. 922.

[3] 9 Stats. 452.

[4] 13 Stats. 325.

[5] 1891 Cal. Stats. 262.

The statute further provided:

"* * * the same to be held for all time by the United States of America for public use, resort and recreation."

The United States by Act of June 11, 1906,[6] accepted the regrant. There are no other statutes pertaining to the Valley, other than the California statute of 1919, hereinafter referred to, ceding jurisdiction to the federal government over the entire Park which includes the Valley.

The problem now arises, do the recited facts show that exclusive jurisdiction of the Valley is vested in the United States? If they do, of course the State has no right to enforce its liquor laws therein.

We hold that the United States has exclusive jurisdiction of the Valley.

(1) In reference to the statutes granting the Valley to the State and regranting it to the United States, the defendants state at page five of their opening brief:

"But neither of these acts granted territorial or governmental jurisdiction to the grantee and so may be disregarded."

We agree that the United States had only a proprietary interest in the Valley and that no jurisdiction passed from [fol. 56] the United States to California or vice versa by virtue of the Acts of 1864 and 1905 alone. That much is conceded by plaintiff and by the United States. But we are inclined to heed these statutes, for they have a further significance.

The State regranting act of 1905 taken in conjunction with the California statute of 1891 generally ceding exclusive jurisdiction to the United States in all cases of transfer of land, establishes beyond a doubt that exclusive jurisdiction of the Valley is now in the United States.

(2) The State contends that regardless of what has been said, the State Legislature had no power to give up its taxing authority over the Valley. There is no federal constitutional prohibition against such a relinquishment. No State measure forbidding the transfer of jurisdiction has

---

[6] 34 Stats. 831.

been cited to us. On the contrary, section 33 of the California Political Code provides for such transfers. What is relied upon is a California constitutional provision forbidding the giving away of the taxing power.[7] In Yellowstone etc. Co. v. Gallatin County, (C. C. A. 9) 31 F. 2d 644, a similar argument was examined and found to be without merit. Defendants have simply misapplied a general rule of state sovereignty to a situation in which the principal issue of territorial jurisdiction controls the right to tax. The Supreme Court, in Standard Oil Co. v. California, 291 U. S. 242, considered the effect of a cession of exclusive jurisdiction over the Presidio in San Francisco by the State to the United States. It was held that the State's right to tax also had been ceded.

(3) It is further argued on behalf of the State that the United States had no power under which it could obtain exclusive jurisdiction of the Valley when the Valley was not purchased with the consent of the State, and was not to be used for the Erection of Forts, Magazines, Arsenals, Dock-Yards and other needful Buildings * * *" as specified in Article I, Section 8, Clause 17 of the federal constitution. It is said in defendants' opening brief (p. 6) that the only manner mentioned in the Constitution for the United States to obtain exclusive jurisdiction of land by the acquisition thereof alone, is that set forth in the quoted clause. The proposition can be conceded, but is far from controlling. We may further concede the next statement made, that when the federal government acquires land and jurisdiction thereof in any other way than that outlined in Article I, Section 8, Clause 17 (in this case by cession), for the purposes mentioned in that clause, the State can make any reservation of jurisdiction it deems desirable short of imposing any conditions inconsistent with the use the United States desires to make of the territory. By the same token, the State can grant exclusive jurisdiction if it fails to impose conditions. As far as the Valley is concerned, that is exactly what occurred. It is sufficient to cite Standard Oil Co. v. California, above, and Arlington v. Fant, above, to the effect that exclusive jurisdiction can be obtained by the United States upon cession of land by a state and without purchase by the United States with the

[7] Cal. Const. Art. XIII, Sec. 6.

consent of the State where the use is one set out in Article I, Section 8, Clause 17.

It is thus seen that the only question involved is whether a State's cession of exclusive jurisdiction to the United States of land used for park or other purposes not enumerated in Article I, Section 8, Clause 17, can be accepted by the latter. And defendants' argument in its essence is that such a procedure is impossible because park purposes are not mentioned in the quoted clause. Defendants' position is not sound. Moreover, it is unsupported by the authorities.

First, there is no constitutional prohibition against states ceding territory or jurisdiction to the United States, nor any constitutional mandate placing the power to cede state territory in the federal government. Therefore such a power, being an inherent incident of sovereignty, must reside in the states, subject to the limitation, immaterial here, of denying a state the right to cede territory to foreign nations without consent of the Congress (Fort Leavenworth R. R. Co. v. Lowe, above).

Second, the power to acquire jurisdiction by treaty, war, discovery or cession, is an attribute of any sovereignty, [fol. 57] whether it be a limited one or not. Jones v. U. S., 137 U. S. 202 at 212.

Third, altho the United States has no express power to accept even limited jurisdiction over ceded territory—yet defendants concede such power, and the courts and history sustain it. Benson v. U. S., 146 U. S. 325, 330. Nor can express constitutional permission to accept exclusive jurisdiction by means other than purchase with state consent be found; yet other methods have been sanctioned by practice and the Supreme Court. Standard Oil Co. v. California, above; U. S. v. Unzeuta, 281 U. S. 138.

Fourth, in Chicago etc. Ry. v. McGlinn, 114 U. S. 542 at 546, we find the court saying:

"• • • it is competent for the legislature of a State to cede exclusive jurisdiction over places needed by the general government in the execution of its powers • • • such jurisdiction necessarily ending when the places ceased to be used for such purposes."

We do not believe that it can be denied that the federal government is here exercising a proper governmental function. Under U. S. v. Butler, 297 U. S. 1, it could tax to raise money to buy parks under the "general welfare" clause.[8] Park and recreational facilities clearly provide for the general welfare. Likewise, it has never been hinted even remotely that the federal government did not have the power under Article IV, Section 3, Clause 2 to provide for the establishment of parks on land the United States had already acquired, whether by conquest, cession or purchase. We therefore think that the federal government could accept jurisdiction under the McGlinn case doctrine. Yellowstone Park Transportation Co. v. Gallatin Co., above; Rainier National Park v. Martin, 18 F. Supp. 481 lend further support to this view.

For the foregoing reasons it is concluded that the United States can and did accept exclusive jurisdiction over the Valley for park purposes.

(4) We turn then to the problem of whether or not the Twenty-First Amendment permits the State to tax liquor within the Valley. That amendment says:

"The transportation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Defendants would have us hold that so long as such land is "territorially" within the state, it is immaterial that such land is beyond the jurisdiction of the state, so far as this amendment is concerned. It is argued:

"* * * the 21st amendment which deals solely with states, territories and possessions of the United States, can only relate to these places territorially and not politically. There is no suggestion in the 21st amendment there were to be areas within states over which such states could not control intoxicating liquors."

We are not convinced that the Twenty-First Amendment serves to extend to states a grant of jurisdiction over terri-

---

[8] Const. Art. I, Sec. 8, Cl. 1.

tories which formerly they could not control. There is nothing in the Amendment to indicate such a purpose, any more than there is to indicate a granting of power to California to tax liquor sales and traffic in Oregon, which clearly would be absurd. Once a state relinquishes its jurisdiction over territory within its limits, its power over that particular land is gone absolutely. Standard Oil Co. v. California, above. A state's right to tax liquor is a matter of power and jurisdiction. While the Amendment may have increased the state's power to deal with the problem (see State Board v. Young's Market, 299 U. S. 59), it did not increase its jurisdiction.

Defendants, by analogy to State Board v. Young's Market, above, proposed to interpret the Twenty-First Amendment in such a way as to modify normal federal powers of sovereignty insofar as liquor regulation is concerned. In the Young's Market case it was held that a beer importer's license fee of $500 imposed by the State of California was not violative of the Commerce Clause or the Equal Protec- [fol. 58] tion Clause of the Fourteenth Amendment. The Supreme Court pointed out that as the Twenty-First Amendment prohibited the "Importation" into a state of intoxicants in violation of the laws thereof, the Commerce Clause to that extent was necessarily and explicitly overruled; and that any classification permitted by the Twenty-First Amendment could not be violative of the Fourteenth.

We think it is straining the Youngs Market case too much to try to apply it to the present controversy where the facts and constitutional provisions involved are so widely divergent. No intent to relinquish the exclusive jurisdiction of the government to the states can fairly be deduced. Fort Leavenworth R. R. Co. v. Lowe, above.

(5) The State having no jurisdiction within the Valley, it is immaterial whether the plaintiff is or is not a federal instrumentality—in either case the taxing power of California cannot reach it. Similarly, the cases in which the federal government has been permitted to tax state-owned and controlled liquor establishments, and which defendants contend justify a state tax on national liquor agencies, are not in point because the State has no jurisdiction whatsoever within the Valley. Thus South Carolina v. U. S., 199 U. S. 437 and like decisions have no bearing on the principal case.

Second

The Park Outside of the Valley

When in 1890 the United States set aside certain of its public lands to establish the Park,[9] the federal interest was merely proprietary. Jurisdiction of the lands comprising the Park was in the State, where it remained until 1919. In that year jurisdiction of the Park was offered to the National Government, which had always retained the proprietary interest:[10]

"Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the Territory which is now or may hereafter be included in * * * 'Yosemite National Park' * * *; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to tax and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situate; provided, however, that jurisdiction shall not vest until the United States through the proper officer notifies the State of California that they assume police jurisdiction over said parks."

By Act of June 2, 1920,[11] jurisdiction of the Park was assumed by the United States. The acceptance statute, referring to the provisions of the California Act, said:

"* * * are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving however, to the said State of California."

---

[9] 26 Stats. 650.

[10] 1919 Cal. Stats. 51.

[11] 41 Stats. 731, 17 U. S. C. A. 57.

The reservations in the California statute were then set out verbatim. None of these statutes referred to or affected the Valley.

(1) What was said about the Valley in relation to the power of California to relinquish its taxing authority over territory ceded to the United States, is equally applicable to the Park. Hence, any voluntary disposal of taxing power in the Park would be valid. We believe, likewise, that what has been said previously in regard to the Twenty-first Amendment is also conclusive as to the Park.

(2) Next we approach the problem of the power of the United States to accept jurisdiction of the Park for recrea- [fol. 59] tional purposes. Since we have held, in our study of the Valley, that exclusive jurisdiction can be obtained, it follows that any lesser quantum of jurisdiction can also be accepted. Fort Leavenworth R. R. Co. v. Lowe, above. Under principles established in the Lowe case and reiterated in Arlington v. Fant, above, the state, in ceding jurisdiction, may impose any conditions or withhold any amount of jurisdiction it desires so long as such reservations do not interfere with the use to which the United States wishes to put the property. In relation to the Park, the State of California had the right to reserve taxing power, not inconsistent with the federal governmental use.

(3) We now pass to a consideration of the taxing power reserved by the State in the Act of 1919 granting jurisdiction of the Park to the United States, and confirmed by the United States in its acceptance statute of 1920.

Reference must be made to the case of Rainier National Park Co. v. Martin (D. C. Wash. 3 Judges), above, in which similar statutes on the same subject gave rise to a problem closely resembling that involved in the case at bar. Despite the surface similarity of issues, we believe it is possible to distinguish the two cases on at least one important point.

In the Washington case a divided court held that the federal government had consented to the levy of an excise tax on the Rainier National Park Company, which was assumed to be a federal instrumentality. Since the clause which led to this interpretation is the same as the saving clause in the federal acceptance of the California grant, it is important to investigate the reason which persuaded the

court to hold as it did. Complete reliance was placed on the case of Mid-Northern Oil Co. v. Walker, 268 U. S. 45, which the majority of the court felt to be controlling. What does an examination of that case reveal? A license tax, measured by the total gross value of crude oil produced, was imposed by the State of Montana on a federal instrumentality engaged in mining. The tax was levied under a statute which saved to the state "the right to levy and collect taxes upon improvements, output of mines, *or other rights*, property or assets of any lessee of the United States." (Italics ours.) Clearly the statute included in its broad language the very tax which the state was collecting. But should such a case control one in which the tax reservation says that the state saves "the right to tax persons and corporations, their franchises and property"? We believe that the answer is "no." The former broad clause covers a license tax; the latter does not. We think that the Washington interpretation of that clause is a strained one, and cannot be applied to the facts of this case.

But granting that the District Court was correct in its ruling, we wish to point out two distinctions between the Washington case and the principal case which we feel should sustain a different holding. In the first place, the California statute differs from the Washington measure of 1901[12] in one important detail. In ceding Yosemite National Park to the federal government, California retained "the right to fix and collect license fees for fishing in said Park." Such an express reservation of the right to collect license fees for one purpose is an indication that the right to collect license fees for all other purposes was renounced. The Washington statute, on the other hand, contains no such reservation.

In the second place—and of fundamental significance—we feel that the nature of the California license tax is sufficiently different from that of the Washington business tax to warrant a different ruling. The California enactment is chiefly regulatory in nature, and is confined to the liquor business; the Washington statute is a revenue measure which covers innumerable trades. While a revenue measure does not preclude the possibility of a clash be-

---

[12] 1901 Session Laws, c. 92, p. 192, § 1.

tween sovereignties, it does not invite one as a regulatory measure does. California has ceded the Park to the United States, which had agreed to police it. Now, by reason of the Alcoholic Beverage Control Act, California evidently claims the retention of her police power. Such a claim is violative of the police jurisdiction placed in the hands of the National Government, and is void.

Since the primary purpose of California's tax measure is the regulation of the intoxicating liquor business; since such regulation constitutes an exercise of the police power [fols. 60-64] which is beyond the jurisdiction of the State, the measure cannot bestow upon California the power to collect license taxes from plaintiff for the importation and sale of liquors.

The motion to dismiss the complaint is denied; the motion for the issuance of a temporary injunction will be granted. Plaintiff will prepare and file proposed findings of fact, conclusions of law, and decree.

Curtis D. Wilbur, Judge, U. S. Circuit Court of Appeals. Michael J. Roche, U. S. District Judge. A. F. St. Sure, U. S. District Judge.

[fols. 65-76] In United States District Court

[Title omitted]

Order Allowing Appeal and Fixing Bond—Filed January 18, 1938

Appeal allowed as prayed, and issuance of citation ordered, returnable within sixty days from the date hereof; defendants to give a bond, with good and sufficient security, in the sum of One Hundred Dollars ($100.00) that they, as appellants, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make good their plea.

Dated January 17th, 1938.

Michael J. Roche, Judge of the District Court. A. F. St. Sure, Judge of the Distict Court. Curtis D. Wilbur, Judge of the Circuit Court of Appeals.

Approved as to form as provided in Rule 22. Amount of bond also approved.

Brobeck, Phleger & Harrison, Solicitors for Complainant.

[File endorsement omitted.]

[fol. 77] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED AND STIPULATION RE TRANSCRIPT ON APPEAL—Filed March 15, 1938

Come now the appellants in the above entitled cause and in support of their appeal hereby file their definite statement of the points on which they intend to rely and hereby state such points to be as follows:

Statement of Points to be Relied Upon

That the District Court of the United States, in and for the Northern District of California, Southern Division, erred in the following respects:

(1) In deciding and holding that the Alcoholic Beverage Control Act of the State of California (California Statutes [fol. 78] 1935, Chapter 330, and amendments thereto) was not applicable within the limits of Yosemite National Park;

(2) In enjoining and restraining defendants, R. E. Collins, John C. Corbett, Fred E. Stewart, Ray Edgar and Harry B. Riley, as members of and constituting the Board of Equalization of the State of California, and defendant, U. S. Webb, Attorney General of the State of California, and their respective successors in office, and their officers, agents, attorneys, servants, and employees, and every other person acting, or claiming or assuming to act, under or by virtue of the authority of the defendants, or any of them (a) from entering upon the premises of complainant, from examining any books, records or accounts of complainant respecting the importation, purchase or sale of alcoholic beverages, from seizing or threatening to seize any alcoholic beverages in possession of complainant, and from interfering with the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite National Park; (b) from seizing, impeding or interfering with any shipments of alcoholic beverages consigned to complainant in Yosemite National Park having origin in points outside of the State of California; (c) from instituting any actions or proceedings in any court of law or equity for violations or alleged violations of said Alco-

51

holic Beverage Control Act in respect of the importation, possession or sale of said alcoholic beverages by the complainant within the limits of said Yosemite National Park; (d) from requiring or demanding the rendition of reports by complainant in respect of such importation, possession or sale of said alcoholic beverages within said Yosemite National Park; and (e) from enforcing in any manner within the limits of Yosemite National Park, or in respect of [fol. 79] transactions within said Park, the Alcoholic Beverage Control Act of the State of California.

(3) In not granting defendants' motion to dismiss the bill of complaint for an injunction.

Designation of Parts of Record to be Printed

The appellants further state that only the following parts of the record, as filed in this Court, need be printed by the Clerk for the hearing of the cause:

Title of Paper	Record Page
1. Bill in equity for injunction	
2. Motion for interlocutory injunction	
3. Order setting hearing on motion for interlocutory injunction	
4. Motion to dismiss	
5. Stipulation for submission	
5a. Findings of fact, & conclusions of law	
6. Final decree	
7. Opinion	
8. Statement of Points to be relied upon and designation of record	
9. Stipulation re printing of record	
10. Stipulation re transcript on appeal	

Dated December 31, 1937.

U. S. Webb, Attorney General of the State of California, by Seibert L. Sefton, Deputy Attorney General.

STIPULATION RE TRANSCRIPT ON APPEAL

Appellee hereby waives any designation by it of additional parts of the record to be printed herein, and does hereby consent to the hearing of the above entitled cause

on the foregoing parts of the record designated by appellants.

Dated December 31, 1937.

Herman Phleger, Maurice E. Harrison, Howard J. Finn, Gregory A. Harrison, James S. Moore, Jr., Theodore R. Meyer, Attorneys for Appellee.

[fol. 80] IN SUPREME COURT OF THE UNITED STATES

STIPULATION IN RE PRINTING OF RECORD—Filed March 15, 1938

It is Hereby Stipulated by and between the above named appellants and appellee, through their respective counsel of record herein that

Whereas the Alcoholic Beverage Control Act of the State of California (Chapter 330, Statutes 1935, as amended), has been heretofore printed in full in the Statement as to Jurisdiction filed herein, that the same need not be reprinted in the record on appeal herein but that wherever in such record the said act appears reference may be made thereto and the fact noted that the same appears in full in said Statement as to Jurisdiction, or in such other manner as the Clerk of [fol. 81] the above entitled Court may designate.

Dated December 31, 1937.

U. S. Webb, Attorney General of the State of California, by Seibert L. Sefton, Deputy Attorney General, Attorneys for Appellants. Herman Phleger, Maurice E. Harrison, Howard J. Finn, Gregory A. Harrison, James S. Moore, Jr., Theodore R. Meyer, Attorneys for Appellee.

[fol. 82] [File endorsement omitted.]

Endorsed on cover: Enter U. S. Webb. File No. 42,351. N. California, D. C. U. S. Term No. 870. R. E. Collins, John C. Corbett and Fred B. Stewart, et al., appellants, vs. Yosemite Park and Curry Co. Filed March 15, 1938. Term No. 870, O. T., 1937.

BLANK

PAGE

FILE COPY

Office - Supreme Court, U. S.
FILED
MAR 15 1938
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 870

R. E. COLLINS, JOHN C. CORBETT AND FRED B. STEWART ET AL.,

Appellants,

vs.

YOSEMITE PARK AND CURRY CO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

STATEMENT AS TO JURISDICTION.

U. S. WEBB,
Attorney General of California,
SHERRET L. SEPTON,
Deputy Attorney General of California.

BLANK

PAGE

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	a
Statutory provisions sustaining jurisdiction	a
State statutes the validity of which is involved	b
Federal statutes the validity of which is involved	b
Date of the decree sought to be reviewed and date of application for appeal	b
Nature of the case	b
Cases believed to sustain jurisdiction	c
Exhibit "A"—Alcoholic Beverage Control Act of California	1
Exhibit "B"—Act of Congress of June 11, 1906	87
Exhibit "C"—Act of Congress of June 2, 1920	88
Exhibit "D"—Opinion of the District Court of the United States for the Northern District of California	89

Table of Cases Cited.

Oklahoma Gas & Electric Co. v. *Oklahoma Packing Co.*, 292 U. S. 386	c
Silas Mason Co. v. *Tax Comm.* (Nos. 7 and 8 of the October Term, 1937)	c
Stratton v. *St. Louis S. W. Ry. Co.*, 292 U. S. 10	c

Statutes Cited.

Act of Congress of June 11, 1906, Section 1 (34 Statutes 831)	b
Act of Congress of June 2, 1920, Section 1 (41 Statutes 731)	b
Alcohol Beverage Control Act, Statutes of 1935, Chapter 330, page 1123, as amended by the Statutes of 1937, Chapter 758, page 2126	b
United States Code Annotated, Title 28, Section 380 (Judicial Code, Section 266)	a, c

BLANK

PAGE

IN THE

DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

No. 4165-R

YOSEMITE VALLEY AND CURRY CO., A CORPORATION,
Plaintiff,

vs.

R. E. COLLINS, JOHN C. CORBETT, FRED B. STEWART, RAY EDGAR, HARRY B. RILEY AND U. S. WEBB,
Defendants.

APPELLANTS' STATEMENT OF GROUNDS FOR JURISDICTION ON APPEAL AND APPELLEE'S WAIVER OF REPLY THERETO.

To the Honorable Judges of the Above Entitled District Court:

The above named defendants and appellants and each of them, in support of the jurisdiction of the Supreme Court of the United States to review the above entitled cause and the final decree herein on appeal and particularly disclosing the basis therefor, respectfully represent:

(a) That the statutory provision believed to sustain such jurisdiction is Section 380 of Title 28 of the United States

Code, Annotated (Judicial Code, Section 266), and particularly to the last clause thereof which reads as follows:

> "• • • and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

(b) 1. That the statute of the State of California, the validity of which is involved, is the Alcoholic Beverage Control Act, Statutes of 1935, Chapter 330, page 1123, as amended by the Statutes of 1937, Chapter 758, page 2126, and that a verbatim copy thereof is attached hereto and marked Exhibit A.

2. That there is also involved the validity of the following statute of the United States, Section 1 of the Act of June 11, 1906 (34 Statutes 831), a verbatim copy of which is attached hereto and marked as Exhibit B.

3. That there is also involved the validity of the following statute of the United States: Section 1 of the Act of June 2, 1920 (41 Statutes 731), a verbatim copy of which is attached hereto and marked as Exhibit C.

(c) That the date of the final decree sought to be reviewed is November 18, 1937, and that the date upon which the application for appeal is presented herein is January 7, 1938.

(d) That the nature of the above entitled case was an application for an injunction by the complainant against the members of the State Board of Equalization of the State of California and against U. S. Webb, Attorney General of the State of California, to enjoin and restrain said State officials from enforcing within the Yosemite National Park the provisions of the Alcoholic Beverage Control Act and particularly to restrain said officials from seizing certain alcoholic beverages imported into said Park from out-

side the State of California, it being claimed by the complainant and appellee that exclusive jurisdiction over said Park was in the Federal Government by virtue of certain Acts of Congress assuming exclusive jurisdiction over said Park, and that the Alcoholic Beverage Control Act was void and ineffective insofar as it attempted to cover the said Park, being in conflict with said Federal Acts; it being claimed on the other hand by your appellants that said Acts of Congress are void and that the Alcoholic Beverage Control Act applies within all the territorial limits of California, particularly as to imports from without the State in view of the Twenty-first Amendment to the United States Constitution.

(e) That the cases believed to sustain the jurisdiction of this appeal are as follows:

Oklahoma Gas & Electric Co. v. *Oklahoma Packing Co.*, 292 U. S. 386;

Stratton v. *St. Louis S. W. Ry. Co.*, 292 U. S. 10;

Silas Mason Co. v. *Tax Com. Oct. Term 1937*, Nos. 7-8.

(f) A copy of the opinion of the District Court is set forth hereafter verbatim as Exhibit D.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this appeal by virtue of Section 380 of Title 28 of the United States Code, Annotated (Judicial Code, Section 266, as amended).

Respectfully submitted,

U. S. WEBB,
Attorney General of the State of California,
By SEIBERT L. SEFTON,
Deputy,
Attorneys for Defendants and Appellants.

BLANK

PAGE

EXHIBIT "A".

Alcoholic Beverage Control Act

OF THE

State of California

Chapter 330, Statutes of 1935

AS AMENDED

CHAPTERS 681 AND 758, STATUTES OF 1937

AND

Related Constitutional Provisions

Published Under Authority of
STATE BOARD OF EQUALIZATION

JOHN C. CORBETT, San Francisco.....*First District*
FRED E. STEWART, Oakland.....*Second District*
R. E. COLLINS, Chairman, Redding.....*Third District*
RAY EDGAR, Dana Point.....*Fourth District*
HARRY B. RILEY, Long Beach.....*Controller*
DIXWELL L. PIERCE.....*Secretary*
GEORGE M. STOUT.....*State Liquor Administrator*

CALIFORNIA STATE PRINTING OFFICE
GEORGE H. MOORE, STATE PRINTER
SACRAMENTO, 1937

45518

TABLE OF CONTENTS

		Page
CONSTITUTIONAL PROVISIONS—		
Repeal of Eighteenth Amendment		5
State Control of Liquor Sales		5
ALCOHOLIC BEVERAGE CONTROL ACT—		
§ 1.	Short Title; Purposes of Act	7
§ 2.	Definitions	7
§ 3.	Licenses Required of Alcoholic Beverage Dealers	11
§ 4.	When Sale without License Authorized	11
§ 5.	Types of Licenses; Fees	11
§ 6.	Privileges Granted by Licenses	13
§ 6.5.	Giving of Samples	17
§ 6.6.	Restrictions on Purchases by Retail Licensees	17
§ 6.7.	Sale or Possession of Undenatured Alcohol by Retail Licensees; Prescriptions	17
§ 6.8.	Unlawful for Salesmen to Violate Act	17
§ 6.9.	Sales by Distilled Spirits Manufacturers to Retailers Subject to Same Provisions Applying to Sales by Wholesalers and Rectifiers	18
§ 7.	Separate License for Each Premise; Storage in Warehouses; Duplicate Licenses in Premises with more than One Service Bar; Transfer of Licenses	18
§ 8.	Period for Which Licenses Issued; Temporary Licenses; Renewal; Failure to Pay Renewal Fee	19
§ 9.	Signing and Posting of Licenses	20
§ 10.	Applications for Licenses	20
§ 11.	Investigation of Applicant; Refund of Fee	21
§ 11a.	Refund of Portion of Fee Where License Issued in Quarter Subsequent to Quarter in Which Application Made	21
§ 12.	Citizenship Qualifications	21
§ 13.	Premises near Churches, Schools, etc.	22
§ 14.	Restrictions on Issuance of Licenses Following Revocation	22
§ 14.5.	Distilled Spirits Manufacturers, Wholesalers or Rectifiers May Have No More Than One License in Any City	22
§ 15.	Zoning Ordinances	22
§ 16.	Restrictions on Issuance of On Sale Licenses	22
§ 16½.	Restrictions on Issuance of Off-Sale License to Distilled Spirits Wholesaler or Rectifier	23
§ 17.	Public Works Camps	23
§ 18.	Restrictions on Issuance of On-Sale Beer and Wine and Distilled Spirits Licenses	23
§ 19.	Brandy Manufacturer's License	23
§ 20.	Industrial Alcohol Dealer's License	23
§ 20½.	Restrictions on Issuance of Distilled Spirits Manufacturer's and Manufacturer's Agent's License	24
§ 21.	Posting and Publication of Notice of Application; Notice to Local Authorities; Hearing on Protest of Local Authorities	24
§ 22.	Payment of Off-Sale Distilled Spirits License Fees; Report of Sales	25
§ 22a.	Payment of Wine Manufacturer's License Fees; Report of Manufacture	26
§ 22b.	Arbitrary Assessment of Fees for Failure to File Reports	26
§ 22c.	Restrictions on Issuance of Licenses where Reports and Payments of License Fees have not been Made	26
§ 22d.	Date When Filing of Reports and Payments of Taxes and Fees Deemed to be Made	26
§ 23.	Excise Tax on Beer and Wine	27
§ 23a.	Tax Exemption for Beer and Wine Consumed by Employees of Manufacturers and Importers	27
§ 23b.	Presumption that Beer and Wine Has Been Sold by Manufacturer or Importer; Exceptions; Exemptions	27
§ 24.	Excise Tax on Distilled Spirits	28
§ 24.2.	Presumption that Distilled Spirits Have Been Sold by Wholesalers or Rectifiers; Exceptions	28
§ 24.3.	"Sale" Includes Transfer for Sale Under A Retailer's License	29

CONTENTS—Continued

		Page
§ 24.4.	Retail Distilled Spirits Licensees Required to keep Records of Purchases	29
§ 24.5.	Unlawful to Possess Distilled Spirits in Packages not bearing Excise Stamps; Exception as to Certain Licensees	29
§ 24.7.	Bond of Distilled Spirits Manufacturers, Wholesalers, Importers and Rectifiers	30
§ 25.	Bond of Beer and Wine Manufacturers and Importers	30
§ 26.	Reports of Beer and Wine Manufacturers and Importers	32
§ 26a.	Assessment of Excise Tax when Report not made; Penalty	32
§ 26b.	Assessment Roll	32
§ 26c.	Payment of Excise Tax on Beer and Wine	33
§ 27.	Investigations by Board; Subsequent Assessments; Petition for Hearing; Overpayment of Tax; Refunds; Distilled Spirits Tax Levies	33
§ 27a.	Notice of Distilled Spirits Excise Tax Levy	34
§ 27b.	Petition for Relevy	34
§ 27c.	Hearing on Petition for Relevy; Notice of Decision	35
§ 27d.	Payment of Distilled Spirits Excise Tax Levy	35
§ 28.	Penalty for Refusal to Permit Examination and for Altering or Falsifying Records	35
§ 29.	Repealed	36
§ 30.	Action to Collect Distilled Spirits Tax Deficiency	36
§ 31.	Summary Action to Collect Beer and Wine Tax	36
§ 31a.	Lien of Tax	36
§ 31b.	Notice to withhold Payments to Delinquent Beer and Wine Manufacturers and Importers	37
§ 31c.	Seizure and Sale of Property of Delinquent Manufacturers and Importers	37
§ 31d.	Proceeds of Sale	38
§ 31e.	Suit to Collect Beer and Wine Tax	38
§ 31f.	Collection Remedies Cumulative	39
§ 31g.	Assessment Roll Prima Facie Evidence of Excise Tax	39
§ 32.	Action to Recover Tax	39
§ 33.	Distilled Spirits Excise Stamps	40
§ 33a.	Character of Stamps; Board to Keep Records	40
§ 33b.	Deliveries of Distilled Spirits to Retailers must be Accompanied with Stamps	41
§ 33c.	Attaching and Cancelling of Stamps	41
§ 33d.	Return of Distilled Spirits to Wholesaler or Rectifier; Issuance of New Stamps; Refunds	41
§ 33e.	Board May Repurchase Stamps	42
§ 34.	Unlawful Sales, Deliveries or Possession of Distilled Spirits; Seizure of Distilled Spirits	42
§ 35.	Unlawful Sale or Possession of Stamps	43
§ 35a.	Unlawful Possession of Stamps by Retailers	43
§ 35b.	Punishment for Unlawful Sale or Possession of Stamps	44
§ 35c.	Seizure of Stamps	44
§ 36.	Counterfeiting or Fraudulent Use of Stamps	44
§ 36a.	Refilling of Distilled Spirits Packages Unlawful	44
§ 36b.	Destruction of Emptied Distilled Spirits Bottles; Unlawful Use of Emptied Bottles	44
§ 37.	Disposition of Funds Collected	45
§ 38.	Board Authorized to make Rules and Regulations	46
§ 38a.	Board may Require Reports	46
§ 38b.	Board may Examine Books and Records	47
§ 38c.	Power to Administer Oaths	47
§ 38d.	Board Members and Employees have Powers of Peace Officers; Sirens and Red Lights on Vehicles; Executive Officers may Join National Association for Liquor Regulation	47
§ 38e.	Beer Price Posting	47
§ 39.	Denial of Licenses	49
§ 40.	Complaints Against Licensees	50
§ 40.5.	Complaints by Local Legislative Bodies	50
§ 41.	Hearings Before Representative of Board	51
§ 42.	Conduct of Hearings; Deposition of Witnesses	52

CONTENTS—Continued

		Page
§ 43.	Certification of Findings to Board	53
§ 44.	Notice of Board's Decision	53
§ 45.	Rehearing by Board	53
§ 46.	Court Review of Board's Action	53
§47.	Petition for Reconsideration not a Bar to Review by Court	54
§ 48.	Service of Notice	54
§ 48.5.	Notice of Violation of Pure Food Act	54
§ 48.6.	Notice to Manufacturers, Rectifiers and Wholesalers of Revoked or Suspended Licenses	55
§ 49.	Imports	55
§ 49.2.	Restrictions on Deliveries by Common Carriers	55
§ 49.4.	Postal Shipments	56
§ 50.	Unlawful Possession on Licensed Premises; Seizure	56
§ 51.	Power of Seizure	57
§ 51a.	Seizure of Stills	57
§ 51b.	Forfeiture	57
§ 51c.	Destruction Following Seizure	57
§ 51d.	Disposition of Forfeited Alcoholic Beverages or Property	58
§ 51e.	Seizure Records	58
§ 51f.	Unlawful Disposition of Seizures	58
§ 51g.	Unlawful Use of Vehicles; Forfeiture of Vehicles	58
§ 52.	Forfeiture Procedure	59
§ 52¼.	Tax Evasion Unlawful	60
§ 53.	Restrictions on Sales in Public Barrooms	60
§ 53.5.	Beer Labels and Containers	60
§ 53.6.	Restriction on Size of Wine and Beer Containers; Brand Names of Beer	61
§ 54.	Restrictions on Owning Interest in Retail Premises	62
§ 54.5.	Restrictions on Owning Interest in Manufacturer's, Rectifier's, Importer's or Wholesaler's License	64
§ 55.	Restrictions on Use of Signs; Spigot Markers; Alcoholic Content of Beer	65
§ 55.2.	Restrictions on Advertising	66
§ 55.5.	Fair Trade Contracts	66
§ 55.7.	Gifts or Premiums Unlawful	67
§ 55.8.	Regulation of Credit Terms	67
§ 56.	Employment of Minors Unlawful	67
§ 57.	Employment of Hostesses and Entertainers on Percentage Basis Unlawful	67
§ 58.	Disorderly Houses Unlawful	68
§ 59.	Sales on Election Day Unlawful	68
§ 59.5.	Retail Sales Unlawful During Certain Hours	68
§ 60.	Restrictions as to Time of Making Wholesale Deliveries	68
§ 61.	Sales to Minors Unlawful	69
§ 62.	Sales to Habitual Drunkard Unlawful	69
§ 63.	Restrictions on Bringing Alcoholic Beverage into Jails, etc.	69
§ 64.	Sales on Public School Grounds Unlawful	69
§ 65.	Punishment for Misdemeanors	70
§ 65a.	Punishment for Felony	70
§ 65b.	Disposition of Fines	70
§ 66.	Shipments in Transit through State	70
§ 66.5.	Duty of Local Authorities to Enforce Act	71
§ 67.	Act not Applicable to Denatured Alcohol; Tax-Free Products	71
§ 67.1.	Industrial Alcohol Dealer's Reports; Diversion to Beverage Use Unlawful	71
§ 67.5.	Excise Tax on Sales to Common Carriers	72
§ 68.	1968 Liquor Control and Beverage Tax Acts Effective until July 1, 1965	73
§ 69.	Schedule of Laws Repealed	73
§ 70.	Constitutionality	73
§ 71.	Act Effective Immediately	74
	Cases Arising under Provisions of Liquor Control and Beverage Tax Acts of 1963	74
	Board has Broad Licensing Powers	74
	"Public Drinking Place" Defined	75

UNITED STATES CONSTITUTIONAL AMENDMENT No. XXI.

REPEAL OF EIGHTEENTH AMENDMENT.

§ 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

§ 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

§ 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by convention in the several States, as provided in the Constitution within seven years from the date of the submission hereof to the States by the Congress.

History.—This amendment to the Federal Constitution became effective December 5, 1933.

Imposition of importer's license fee constitutional.—The provision of the Alcoholic Beverage Control Act imposing a license fee of $500 for the privilege of importing beer within the State does not violate the Federal Constitution. The provision is valid under section 2 of the Twenty-first Amendment. (*State Board of Equalization* vs. *Young's Market Company* (1936), 299 U. S. 59.)

CALIFORNIA CONSTITUTIONAL AMENDMENT.

ARTICLE XX.

STATE CONTROL OF LIQUOR SALES.

SEC. 22. The State of California, subject to the Internal Revenue Laws of the United States, shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of intoxicating liquor within the State, and subject to the laws of the United States regulating commerce between foreign nations and among the States shall have the exclusive right and power to regulate the importation into and exportation from the State, of intoxicating liquor. Intoxicating liquors, other than beers, shall not be consumed, bought, sold, or otherwise disposed of for consumption on the premises, in any public saloon, public bar or public barroom within the State; provided, however, that subject to the aforesaid restriction, all intoxicating liquors may be kept and may be bought, sold, served, consumed, and otherwise disposed of in any bona fide hotel, restaurant, cafe, cafeteria, railroad dining or club car, passenger ship, or other public eating place, or in any bona fide club after such club has been lawfully operated for not less than one year. The State Board of Equalization shall have the exclusive power to license the manufacture, importation and sale of intoxicating liquors in this State, and to collect license fees or occupation taxes on account thereof and shall have the power, in its discretion, to deny or revoke any specific liquor license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals. It shall be unlawful for any person other

than a licensee of said board to manufacture, import or sell intoxicati liquors in this State. Until the Legislature shall otherwise provi the privilege of keeping, buying, selling, serving, and otherwise disp ing of intoxicating liquors in bona fide hotels, restaurants, cafes, ca terias, railroad dining or club cars, passenger ships, and other pub eating places, and in bona fide clubs after such clubs have been lawful operated for not less than one year, and the privilege of keepi buying, selling, serving, and otherwise disposing of beers on a premises open to the general public shall be licensed and regulat under the applicable provisions of the so-called State Liquor Cont Act, California Statutes 1933, Chapter 658, in so far as the same a not inconsistent with the provisions hereof, and excepting that t license fee to be charged bona fide hotels, restaurants, cafes, cafeteri railroad dining or club cars, passenger ships, and other public eati places, and any bona fide clubs after such clubs have been lawful operated for not less than one year, for the privilege of keeping, buyi selling, or otherwise disposing of intoxicating liquors other than bee and wines, shall be $250.00 per year, or $62.50 per quarter-annum f seasonal businesses, subject to the power of the State Board of Equaliz tion to change such fees.

The Legislature may authorize, subject to reasonable restriction the sale in retail stores of liquor contained in the original package where such liquor is not to be consumed on the premises where sol

The Legislature shall provide for apportioning the amounts co lected for license fees or occupation taxes under the provisions here between the State and the cities, counties and cities and counties the State, in such manner as the Legislature may deem proper.

All constitutional provisions and laws inconsistent with the prov sions hereof are hereby repealed.

History.—On November 8, 1932, the people of the State of Californ repealed the Wright Act which enforced the provisions of the Eighteen Amendment to the Constitution of the United States and the provisions of t Volstead Act. Section 22 was added to Article XX of the State Constitution the same time.

On November 6, 1934, the people of the State of California adopted amendment to section 22, Article XX of the State Constitution. This sectio in its present form is set forth above.

License tax by municipality void after December 5, 1933.—Subsequent April 6, 1933, and prior to December 5, 1933, the operative date of section 22 Article XX of the State Constitution, a municipal corporation, as well as the Sta had the right to license, for revenue, dealers in alcoholic liquors. (*Los Angeles Bre ing Co.* vs. *City of Los Angeles* (1935), 8 Cal. App. (2d) 379).

After December 5, 1935, however, a municipal corporation did not ha power to impose a license tax for the purpose of revenue upon such dealers view of section 22 of Article XX, which conferred upon the State the "exclusi right and power to control license and regulate the manufacture, sale * * and disposition of intoxicating liquors within the State * * *." (*Los Angel Brewing Co.* vs. *City of Los Angeles* (1935), 8 Cal. App. (2d) 391.)

Payments made after December 5, 1933, for liquor license tax stamps we made involuntarily when the payment was required by a city ordinance imposi severe civil and criminal penalties for failure to pay the tax and the payment wa accompanied by a written protest. (*Vitale* vs. *City of Los Angeles* (1936). 1 Cal. App. (2d) 704.)

Alcoholic Beverage Control Act

An act to license, regulate and control the manufacture, transportation, sale, purchase, possession and disposition of alcoholic beverages; to levy an excise tax on the sale of alcoholic beverages; to provide for the licensing of the manufacture, distribution and sale of alcoholic beverages; to promote temperance in the use of alcoholic beverages; to adopt and enforce unfair trade practice regulations and price posting provisions regulating the sale of alcoholic beverages; to prescribe penalties for the violation of this act; to make an appropriation for the enforcement of this act; to take effect immediately. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added the provisions respecting temperance and unfair trade practice and price posting regulations.

Approved June 13, 1935. Stats. 1935, p. 1123; amended by Stats. 1937, ch. 681 and ch. 758.

SHORT TITLE; PURPOSES OF ACT.

SECTION 1. This act shall be deemed an exercise of the police powers of the State, for the protection of the safety, welfare, health, peace and morals of the people of the State; to eliminate the evils of unlicensed and unlawful manufacture, selling and disposing of alcoholic beverages, and to promote temperance in the use and consumption of alcoholic beverages; and it is hereby declared that the subject matter of this act involves in the highest degree the economic, social and moral well-being and the safety of the State and of all its people; and all provisions of this act shall be liberally construed for the accomplishments of these purposes. This act is known and may be cited as the "Alcoholic Beverage Control Act." *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added all but the last sentence.

DEFINITIONS.

SEC. 2. The following words, terms and phrases when used in this act have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) **"Alcohol"** means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(b) **"Alcoholic beverage"** means and includes alcohol, spirits, liquor, wine, beer and every liquid or solid containing alcohol, spirits, wine or beer, and which contains one-half of one per cent or more

* In 1933 the Legislature enacted three laws relating to alcoholic beverages. See Stats. 1933, pp. 340, 625, and 1697. These acts were repealed by sections 68 and 69 of this act.

of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances.

(c) **"Beer"** means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination thereof in water, and shall include ale, porter, brown, stout, larger beer, small beer and strong beer but shall not include sake known as Japanese rice wine.

(d) **"Distilled spirits"** means an alcoholic beverage obtained by the distillation of fermented agricultural products, and shall also include alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.

(e) **"Wine"** means for the purposes of this act the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar or any such alcoholic beverages fortified with grape brandy, fruit brandy or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made and other rectified wine products and by whatever name and which does not contain more than 15 per cent added flavoring, coloring and blending material and which contains not more than 24 per cent of alcohol by volume and shall include Vermouth and sake, known as Japanese rice wine. Nothing herein contained shall be construed to affect or limit the power, authority or duty of the State Department of Public Health in the enforcement of the laws directed toward preventing the manufacture, sale or transportation of adulterated, misbranded or mislabeled alcoholic beverages, and the definition of "wine" herein contained shall be limited strictly to the purposes of this act and shall not extend to, or repeal by implication, any act preventing the manufacture, sale or transportation of adulterated, misbranded or mislabeled alcoholic beverages.

(f) **"Person"** includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate or any other group or combination acting as a unit, and the plural as well as the singular number.

(g) **"Board"** means the State Board of Equalization of the State of California.

(h) **"Club"** means a corporation or association which is the owner, lessee or occupant of an establishment operated solely for objects of a social or athletic nature, having a bona fide membership list, and the majority of the members of which pay dues at least once in every year, but not for pecuniary gain, and the property as well as the advantages of which belong to the members.

(i) **"Beer manufacturer"** means any person engaged in the manufacture of beer.

(i1) **"Brandy manufacturer"** means any person engaged in the manufacture of brandy only and not in the manufacture of any other distilled spirits.

(i2) **"Wine manufacturer"** means any person engaged in the manufacture of wine, except that any person who manufactures not to exceed two hundred gallons of wine per year for his own consump-

tion shall not, because of such manufacture, be considered a wine manufacturer within the meaning of this act.

(i3) **"Industrial alcohol dealer"** is a person who sells alcohol or distilled spirits in packages of more than one gallon for use in the trades, professions, or industries, but not for beverage use.

(i4) **"Retailer"** means and includes any on- or off-sale licensee.

(j) **"Rectifier"** means every person who colors, flavors, or otherwise processes distilled spirits by distillation, blending, percolating or other processes.

(k) **"Importer"** means any consignee of alcoholic beverages brought into this State from without this State when such alcoholic beverages are for delivery or use within this State, or any person bringing alcoholic beverages into this State from without this State which are not consigned to any person and which are for delivery or use within this State.

(k1) **"Exporter"** means any person who sells, delivers or consigns alcoholic beverages located within this State for delivery or use or sale without the State.

(k2) **"Private Warehouse"** means any place maintained by a licensee under this act, other than his licensed premises, for the storage but not for the sale of alcohol or alcoholic beverages owned by such licensee.

(k3) **"Public warehouse"** means any place licensed for the storage of, but not the sale of, alcohol or alcoholic beverages for the account of other licensees and shall include United States custom bonded warehouses and United States internal revenue bonded warehouses when such bonded warehouses are used for storage of alcoholic beverages for the account of another licensee.

(k4) **"Retail sale"** or **"sale at retail"** means the sale by an on- or off-sale licensee for consumption and not for resale.

(l) **"Sell"** or **"sale"** and the phrase **"to sell"** means and includes any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and means and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages and shall include soliciting or receiving an order for such beverages, but shall not include the return of alcoholic beverages by a licensee to the licensee from whom such alcoholic beverages were purchased.

(m) **"Public bar,"** or **"public saloon"** or **"public barroom"** is hereby expressly prohibited and means any room to which the public has access in which there is any bar, counter or other structure over which beverages of an alcoholic content in excess of four per cent by weight are sold or served by the drink to the public for consumption on the premises; provided, however, that counters or other structures used for the sale, service and consumption of meals, and not as a subterfuge for a public bar, shall not be deemed to be a public bar within the meaning of this act.

(n) **"Package"** means any container or receptacle used for holding alcoholic beverages which is corked or sealed with a stub, stopper or cap, or in any other manner.

(o) **"To bottle"** or **"to package"** means to bottle, barrel, or otherwise place alcoholic beverages in a container.

(p) **"Distilled spirits manufacturer"** means any person who produces distilled spirits from naturally fermented materials or in any other manner.

(q) **"Proof spirits"** means that alcoholic liquor which contains one-half of its volume of pure ethyl alcohol of a specific gravity of 0.7939 at sixty degrees Fahrenheit, referred to water at sixty degrees Fahrenheit as unity.

(r) **"Proof gallon"** means a gallon of proof spirits, or an equivalent amount of alcohol.

(s) **"Wholesaler"** means and includes every person other than a manufacturer or rectifier who is engaged in business as a jobber or wholesale merchant, dealing in alcoholic beverages.

(t) **"Wholesale sale"** or **"sale at wholesale"** means a sale to any licensee for purposes of resale.

(u) **"Retailer's on-sale license"** means and includes on-sale beer licenses, on-sale beer and [illegible] licenses, and on-sale distilled spirits licenses.

(v) **"Gallon"** or **"wine gallon"** means that liquid measure containing two hundred thirty-one cubic inches.

(w) **"Within this State"** means all territory within the boundaries of this State.

(w1) **"Without the State"** means all territory without the boundaries of this State.

(x) **"Still"** means a still used in the production or capable of being used in the production of alcoholic beverages and does not include stills or apparatus used solely in the production of distilled water or substances other than alcoholic beverages.

(y) **"Broker"** means and includes every person other than a manufacturer, rectifier, or wholesaler who is engaged in dealing in warehouse certificates to alcoholic beverages.

(z) **"Case"** or **"original case"** means a standard box or carton as packed by the manufacturer in which packages of alcoholic beverages are shipped or transferred.

(z1) **"Licensee"** means any person holding a license issued by the board.

(z2) **"Salesman"** means any individual who solicits or receives an order for alcoholic beverages from any licensee. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added paragraphs (i), (l1), (l2), (l3), (l4), (k1), (k2), (k3), (k4), (w), (w1), (y), (z), (z1) and (z2) and changed definition of: 1. "Public bar" by adding "is hereby expressly prohibited." 2. Substituted "Distilled spirits manufacturer" for "Distiller" in paragraph (p). 3. Omitted "Broker" from definition of "Wholesaler" and amended "Distilled spirits," "Wine," "Importer," "Sale" and "Public bar" in such manner as to render it inexpedient to list details.

Wine definition.—Mixtures containing wine, alcohol, flavoring and water, with the added alcohol being three times as much as the wine are not wines within the meaning of section 2 of the Alcoholic Beverage Control Act. (*Tuo Ginger Ale Co., Ltd., vs. Davis et al* (1936), 12 Cal. App. (2d) 73.)

LICENSES REQUIRED OF ALCOHOLIC BEVERAGE DEALERS.

SEC. 3. No person shall exercise the privilege or perform any act or acts which a licensee under this act may exercise or perform under the authority of a license issued under this act unless such person is authorized to do so by a license duly issued pursuant to the provisions of this act. Any person violating any provision of this section shall be guilty of a misdemeanor, except that any person exercising the privileges or performing any act or acts which a still licensee may exercise or perform without having a still license duly issued under this act to said person is guilty of a felony. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted by Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted all provisions except that making violation a misdemeanor and added all other provisions.

WHEN SALE WITHOUT LICENSE AUTHORIZED.

SEC. 4. Any person in possession of a stock of lawfully acquired alcoholic beverages following the revocation or voluntary surrender of, or failure to renew his license may sell such stock, under supervision of the board in such manner as the board shall by rule or regulation provide, to a licensee or licensees authorized to sell such alcoholic beverages.

Any bank, trust company, or financial institution owning or possessing warehouse receipts for alcoholic beverages which warehouse receipts were acquired by such bank, trust company, or financial institution as security for a loan may after permission has been given by the board sell such warehouse receipts to a licensee authorized to sell such alcoholic beverages or such warehouse receipts. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted all provisions of former section and amended section to read as above.

TYPES OF LICENSES; FEES.

SEC. 5. The following are the types of licenses to be issued under this act and the annual fees to be charged therefor.

1. Beer manufacturer's license	$750.00 per year
2. Wine manufacturers license (to be computed only on the gallonage manufactured) five thousand gallons or less	20.00 per year
Over five thousand gallons to twenty thousand gallons per year	40.00 per year
Over twenty thousand to one hundred thousand gallons per year	75.00 per year
Over one hundred thousand to two hundred thousand gallons per year	100.00 per year
Over two hundred thousand gallons to one million gallons a year	150.00 per year
For each million gallons or fraction thereof over a million gallons an additional	100.00 per year
3. Distilled spirits manufacturer's license	250.00 per year

4.	Still license	10.00 per y per still
5.	Rectifier's license	250.00 per y
6.	Brandy manufacturer's license	150.00 per y
7.	Distilled spirits importer's license	no
8.	Wine importer's license	no
9.	Beer importer's license	no
10.	Public warehouse license	10.00 per y
11.	Wine bottling or packaging license	10.00 per y
12.	Beer bottling or packaging license	500.00 per y
13.	Distilled spirits wholesaler's license	250.00 per y
14.	Beer and wine wholesaler's license	50.00 per y
15.	Broker's license	250.00 per y
16.	Retail package off-sale beer and wine license	10.00 per y
17.	Retail package off-sale distilled spirits license for the first $10,000 retail sales per year	100.00 per y
	For each $1,000 retail sales or fraction thereof over $10,000 per year	10.00 per y
18.	Industrial alcohol dealer's license	50.00 per y
19.	On-sale beer license	25.00 per y
20.	On-sale beer and wine license	75.00 per y
21.	On-sale beer and wine license for trains (per train)	15.00 per y
22.	On-sale beer and wine license for boats (per boat)	50.00 per y
23.	On-sale distilled spirits license	As set by the boa
24.	Distilled spirits manufacturer's agents license	250.00 per y

In fixing license fees for on-sale distilled spirits licenses, the boa may place common carrier boats and trains in a separate classificati or separate classifications, and fix therefor different or lesser licen fees for boats or for trains than that fixed for other on-sale distil spirits licenses, giving consideration to the limited number of possi customers on boats or on trains and the limited number of hours with which it is practicable to exercise such license on a boat or on a tra

The fees specified above shall be reduced twenty-five per cent each full quarter of a year elapsing between the first day of the y for which the license is issued and the date on which the applicati for the license is filed with the board; provided, that where an app cation clearly indicates that the applicant does not desire to exerc the privileges granted by the license applied for until on or af the beginning of the quarterly period following the quarterly period which the application is filed with the board, such fees shall be reduc twenty-five per cent for each full quarter of a year elapsing betwe the first day of the year for which the license is issued and the d so indicated in the application, but in no event shall any license, oth than a temporary on-sale beer or wine license, be issued for any per for a fee less than one-half the annual license fee therefor.

The provisions of this paragraph shall not be deemed to restrict power of the board to make the refunds authorized by section 11a.

Where the fee for any license is graduated according to the amou of alcoholic beverages manufactured or sold under the license, a the license is applied for after the beginning of the year, the amou

of alcoholic beverage authorized to be manufactured or sold under the license shall be reduced proportionately with the reduction in fee provided in the preceding paragraph in accordance with such rules and regulations as the board may prescribe; provided that in the case of wine the license fee shall be determined solely upon the gallonage manufactured. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats 1937, ch. 758, added "(to be computed only on the gallonage manufactured)" to subdivision 2. Omitted "Fruit" from subdivision 6; divided distilled spirits and wine importer's license into two separate licenses and omitted fees for importers' licenses; and added provisions for a public warehouse license, a broker's license and a distilled spirits manufacturer's agent's license; added provision relating to fixing of fees for on-sale distilled spirits licenses for boats and trains; added provisions relating to issuance of licenses for any period less than a half year for a fee not less than one-half the annual license fee, the reference to section 11a, and the proviso at the end of the section; and omitted provisions for wine manufacturers' licenses for fees less than $20 per year and distilled spirits bottling or packaging license.

Importer's license fee constitutional.—The provision of the act (as it read prior to 1937) imposing a license fee of $500 for the privilege of importing beer within the State does not violate the Federal Constitution. (*State Board of Equalization* vs. *Young's Market Company* (1936), 299 U. S. 59.)

PRIVILEGES GRANTED BY LICENSES.

SEC. 6. Except as otherwise provided in this act and subject to the provisions of section 22 of Article XX of the Constitution, the licenses provided for in the preceding section shall authorize the person to whom issued to exercise the following rights and privileges and no others at the premises for which issued during the year for which issued.

(a) Any manufacturer's license authorizes the person to whom issued to become a manufacturer and importer of the alcoholic beverage specified in the license, and whether manufactured by him or any other person, to package, rectify, mix, flavor, color, label and export the same, and to sell only such alcoholic beverages as are packaged by or for him only to persons holding wholesaler's, manufacturer's or rectifier's licenses authorizing the sale of such alcoholic beverages and to persons who take delivery of such alcoholic beverages within this State for delivery or use without the State, except that beer manufacturers may also sell beer to any person holding a license authorizing the sale of beer, and wine manufacturers may also sell wine to any person holding a license authorizing the sale of wine; provided further, that a wine manufacturer's license authorizes the manufacture of grape brandy to be used exclusively for fortifying purposes by its holder on the premises for which issued; provided further, that as to distilled spirits produced in this State any manufacturer of such distilled spirits so produced in this State may sell such distilled spirits to any person holding a license authorizing the sale of distilled spirits.

The provisions of this subdivision shall not be deemed to prevent any licensed manufacturer of distilled spirits who on the effective date of this section shall be in possession of distilled spirits produced without the State, from selling such distilled spirits to licensees authorized to sell such distilled spirits, subject to the provisions of this act, during the license year ending June 30, 1938.

(b) A still license authorizes the person to whom issued to own or possess the number of stills indicated in the license upon the premises for which issued.

(c) A rectifier's license authorizes the person to whom issued to cut, blend, rectify, mix, flavor, and color distilled spirits; and wine upon which the excise tax imposed by section 23 has been paid, and, whether so cut, blended, mixed, flavored or colored by him or any other person, to package, label, export, and to sell such products to persons holding licenses issued by the board authorizing the sale of distilled spirits.

(d) Any importer's license authorizes the person to whom issued to become an importer of alcoholic beverages specified in the license and to export such alcoholic beverages, and to transfer such beverages to himself under another license.

An importer's license shall not be issued to any person except the holder of a manufacturer's, rectifier's, or wholesaler's license.

(e) A bottling or packaging license authorizes the labeling, bottling or packaging of the alcoholic beverages specified in the license.

(e1) Wine bottling or packaging license authorizes the labeling, bottling or packaging of the alcoholic beverages specified in the license in accordance with and subject to the rules and regulations now in effect or as may hereafter be adopted by the State Department of Public Health of the State of California.

(f) Any wholesaler's license authorizes the sale of the alcoholic beverage specified in the license only to persons holding licenses issued by the board authorizing the sale of such alcoholic beverage, the exportation of such alcoholic beverages, and the dealing in warehouse receipts to such alcoholic beverages.

A wholesaler's license shall not be issued to any on-sale licensee and no wholesale license shall be issued to any other person who does not in good faith actually carry on or intend to carry on a bona fide wholesale business, by sale to retail licensees, of the alcoholic beverage designated in such wholesale license, and the board may revoke any such wholesale license where such licensee fails for a period of forty-five days to actively and in good faith engage in such wholesale business. Sale by a wholesale licensee to himself as a retail licensee shall not be held to be the transaction of a bona fide wholesale business.

(g) A retail package off-sale beer and wine license authorizes the sale, to consumers only and not for resale, of beer in packages and in quantities of thirty-one gallons or less per sale, and the sale of wine in packages and in quantities of fifty-two gallons or less per sale, for consumption off the premises where sold.

(h) An off-sale distilled spirits license authorizes the sale, to consumers only and not for resale, of distilled spirits in packages of not more than one gallon and, after December 31, 1937, in packages containing not less than one-half pint for consumption off the premises where sold; except that nothing in this act shall be deemed to prevent the sale in packages of less than one-half pint, of bitters or other aromatic or flavoring or medicinal preparations, which are classed for taxing purposes as distilled spirits, by off-sale distilled spirits licensees.

(i) An industrial alcohol dealer's license authorizes the sale of undenatured ethyl alcohol in packages of more than one gallon for use in the trades, professions or industries and not for beverage consumption.

(j) Any on-sale license authorizes the sale of the alcoholic beverage specified in the license for consumption on the premises where sold. An on-sale distilled spirits license authorizes the purchase and possession of distilled spirits in packages of not more than one gallon capacity. An on-sale beer and an on-sale beer and wine license also authorizes the exercise, with respect to the particular beverage or beverages mentioned in such license, of the rights and privileges granted by an off-sale beer and wine license, provided, however, that none of the licensees mentioned in this sentence shall have the right by reason of any such license in this sentence mentioned, to label bottle or package or refill any package with any alcoholic beverage. On trains and boats, under such licenses, alcoholic beverages may be served only to passengers or employees.

(k) A broker's license authorizes the sale of warehouse certificates for alcoholic beverages only to persons holding licenses issued by the board authorizing the sale of such alcoholic beverage.

(*l*) A public warehouse license authorizes the storage of alcoholic beverages for the account of another licensee, including the storage of such beverages in a United States customs bonded warehouse, a United States internal revenue bonded warehouse and a United States bonded storeroom; provided, however, that as provided in section 7 hereof no license shall be required for the storage of beer upon which the excise tax levied by this act has been paid.

(m) Any manufacturer's, rectifier's or wholesaler's license shall also authorize the transfer of title to such alcoholic beverages to other licensed manufacturers, rectifiers and wholesalers when such alcoholic beverages are in storage in a licensed public warehouse, United States customs bonded warehouse or United States internal revenue bonded warehouse or United States bonded storerooms located at any place within the State without any additional or other license therefor.

(n) A distilled spirits manufacturers agent's license authorizes the importation of distilled spirits into this State, the possession of distilled spirits in public or private warehouses, the exportation of distilled spirits, the cutting, blending, mixing, flavoring and coloring of distilled spirits and whether so cut, blended, mixed, flavored or colored by him, or any other person, the packaging and the sale of such distilled spirits only to holders of distilled spirits manufacturer's, rectifier's or distilled spirits wholesaler's licenses.

(o) A licensed beer manufacturer or a licensed beer wholesaler may, in addition to selling beer at his licensed premises, sell to other licensees authorized to sell beer from wagons or trucks operated by such manufacturer or wholesaler, and provided that a beer manufacturer may sell and deliver beer from branch offices located away from his place of manufacture and exercise all his license privileges thereat and therefrom, other than manufacture, and the board shall upon request issue such beer manufacturer a duplicate of his original license which shall authorize the maintenance and operation of each

branch declared and designated by said manufacturer, upon the payment for each such duplicate of an amount equal to the license fee payable for a like period for a wholesale beer and wine license, and provided that in case any violation of any provision of this act or of any regulation of the board shall be committed in the exercise of the license privileges hereby authorized to be exercised at any such branch office, in the event such violation shall become a matter of investigation or hearing or decision by the board with relation to the license of the licensee, the board in making its ruling or decision, where such violation shall be found to be one committed in connection with the operation of said branch office and not a violation in connection with manufacturing or the manufacturing premises, shall not suspend or revoke or interfere with the manufacturer's license privileges or license at his place of manufacture but shall limit the application of its decision, permissible under this act, to and in connection with the particular duplicate license and the premises in the operation of which the violation occurred, and in the case of any violation of any provision of this act or of any regulation of the board committed in connection with the premises where the act of manufacturing beer is performed, the board in making its ruling or decision in connection with any such violation shall limit any such decision, permissible under this act, to and in connection with the license upon the premises of manufacture and to the particular function exercised by the licensee wherein a violation occurred, such as manufacturing, importing, exporting, packaging, labeling, selling to wholesalers or selling to retailers, and any existing duplicate license for any branch office, unless such branch office actually participated in the commission of the violation, shall not be affected or interfered with by such decision or by reason of such violation.

(p) A licensed wine manufacturer may in addition to selling wine at his licensed premises sell and deliver wine to other licensees from branch offices or warehouses or United States bonded storerooms, located away from his place of manufacture and exercise all his license privileges thereat and therefrom other than manufacture, and the board shall upon request issue such wine manufacturer a duplicate of his original license which shall authorize the maintenance and operation of each branch or warehouse or United States bonded storeroom declared and designated by said manufacturer upon the payment for each such duplicate of an amount equal to the license fee payable for a like period for a wholesale beer and wine license.

(q) Any distilled spirits manufacturer's or brandy manufacturer's license and any rectifier's license authorizes the sale, in conformity with United States internal revenue laws and regulations, of such distilled spirits, the sale of which is authorized by the license, in packages larger than one gallon for use in the trades, professions or industries and not for beverage use.

(r) Any beer manufacturer, wine manufacturer, rectifier or any wholesaler licensed under this act may in addition to the other privileges exercised under such license and in accordance with rules and regulations prescribed by the board, sell tax paid alcoholic beverages mentioned in the license of such licensee to nonlicensees having a fixed place of business or residence upon territory within this State which

s maintained by the United States Government as a military or naval eservation or national park. *(Statutes 1937, ch. 758; operative uly 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added pararaph (e1) and paragraphs (k) to (r); changed paragraphs (a), (c), (d), (f), h), (i) and (j) in such manner as to render it inexpedient to list details.

Federal Military Reservations.—Paragraph (f) of section 6 does not authorize holder of a wholesaler's license to make sales of alcoholic beverages to nonlicensees; his is true even though the nonlicensee is located on a military reservation over hich the Federal government has exclusive jurisdiction. *(McKesson and Robbins, nc.*, vs. *Collins et al* (1937), 88 C. A. D. 293.)

GIVING OF SAMPLES.

SEC. 6.5. Any manufacturer's, rectifier's, importer's or wholealer's license also authorizes the giving away of samples of the kind f alcoholic beverage the sale of which is authorized by any such icense; provided that no holder of any such license shall give away ny such samples of alcoholic beverages except under such regulations s shall be prescribed by the board. A retail license does not authorize he furnishing or giving away of any free samples of alcoholic eyerages. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

RESTRICTIONS ON PURCHASES BY RETAIL LICENSEES.

SEC. 6.6. No retail on- or off-sale licensee shall purchase alcoholic eyerages for resale from any person except a person holding a beer or wine manufacturer's, a rectifier's or a wholesaler's license issued nder this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

SALE OR POSSESSION OF UNDENATURED ALCOHOL BY RETAIL LICENSEES; PRESCRIPTIONS.

SEC. 6.7. No retail licensee, except a pharmacy or drug store egistered with the California State Board of Pharmacy, shall sell or possess on his licensed premises any undenatured alcohol of any proof r compound thereof which is an alcoholic beverage as defined in ection 2 of this act containing more than sixty per cent of alcohol by olume. Undenatured alcohol shall be sold at retail only upon the prescription or order of the holder of a physicians and surgeons or dentists or veterinarians license. Any person who violates any of the provisions of this section is guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

UNLAWFUL FOR SALESMEN TO VIOLATE ACT.

SEC. 6.8. It shall be unlawful for any salesman to aid or abet in the violation of any of the provisions of this act or knowingly to become a party either directly or indirectly in the violation of any of

the provisions of this act. *(Statutes 1937, ch. 758; operative July 1 1937.)*

History.—Added by Stats. 1937, ch. 758.

SALES BY DISTILLED SPIRITS MANUFACTURERS TO RETAILERS SUBJECT TO SAME PROVISIONS APPLYING TO SALES BY WHOLESALERS AND RECTIFIERS.

SEC. 6.9. All the provisions of this act relating to the sale and deliv ery of distilled spirits from distilled spirits wholesalers or rectifiers t on- or off-sale licensees and all provisions of this act relating to distille spirits excise tax procedure shall apply to distilled spirits manufac turers when making sales of distilled spirits produced in this Stat to on- or off-sale licensees in those cases where distilled spirits manu facturers are authorized to make sales to such licensees. *(Statute 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

SEPARATE LICENSE FOR EACH PREMISE; STORAGE IN WAREHOUSES; DUPLICATE LICENSES IN PREMISES WITH MORE THAN ONE SERVICE BAR; TRANSFER OF LICENSES.

SEC. 7. Each license issued under this act shall be issued to specific person, and, except in the case of licenses authorizing the sal of alcoholic beverages on trains or boats, shall be issued for a specifi location, the principal address of which shall be indicated on th license. Separate licenses shall be issued for each of the premises o any business establishment having more than one location except a provided for in section 6, subdivisions (o) and (p), and except tha the holder of a public warehouse license maintaining or operatin more than one public warehouse in this State shall be required t obtain but one license for all of his public warehouse establishments A copy of the original public warehouse license issued to a publi warehouseman maintaining or operating more than one public ware house in this State shall be posted in each of his public ware house establishments. A charge of one dollar shall be made by th board for each copy of a public warehouse license issued to suc public warehouseman.

Beer and wine upon which excise taxes have been paid to the Stat at the rate fixed under this act, may be stored by or for any license under this act in any private or public warehouse or elsewhere i this State without the necessity of any license by the party furnishin or providing the storage space, or any special additional license bein required by such licensee; provided, however, that any oth r alcoholi beverage may without the necessity of any additional license be store by or for a licensee in private warehouses approved by the board i within the limits of the county in which such licensees licensed prem ises are located, or in a public warehouse within such county, or ma be stored in bond in a public warehouse outside such county wher such warehouse is also a United States customs bonded warehouse, or

United States internal revenue bonded warehouse or United States bonded storeroom.

Any on-sale distilled spirits licensee who maintains upon or within the premises for which such license is issued more than one room in which there is regularly maintained a fixed counter or service bar at which distilled spirits are served for consumption within the licensed premises shall obtain from the board, and the board shall upon request issue a duplicate of his original license for each room, in excess of one, containing such fixed counter or service bar and shall post a duplicate of his original license in each such room. He shall pay to the board at the time of application for each such duplicate license an amount equal to the license fee payable for a like period for the original on-sale distilled spirits license. Failure to obtain such duplicate license or licenses and to pay such fees and renewal fees therefor shall subject such licensee to the penalties imposed by this act for failure to obtain an original license or to pay the renewal fees therefor.

Licenses for trains and boats shall be based on the average number in actual operation, during the license year, of each class of operating units, viz, trains and boats upon which the license provileges are exercised, such average number to be determined as the board may prescribe.

Each license issued under this act is separate and distinct, shall be transferable from one person to another upon approval by the board and the payment of a transfer fee of ten dollars, and upon such conditions as the board shall prescribe, and shall be transferable from the premises for which issued upon compliance with the provisions of this act relating to the issuance of an original license and only as may be permitted by the board, upon payment of a transfer fee of ten dollars for each license.

Whenever a license certificate issued under the act is in effect and is lost or destroyed, the board shall issue a duplicate license upon the payment of a fee of five dollars. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added present second and third paragraphs and provisions for one license for a public warehouseman operating more than one warehouse in this State; and provided licenses shall be transferable from one person to another upon approval by the board and payment of the tranufer fee of $10; and changed premises transfer fee from $5 to $10.

PERIOD FOR WHICH LICENSES ISSUED; TEMPORARY LICENSES; RENEWAL; FAILURE TO PAY RENEWAL FEE.

SEC. 8. All retailer's on-sale licenses, except on-sale distilled spirits licenses for seasonal businesses, shall be issued on a calendar year basis, except that the board may issue special licenses for the sale of beer or wine on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering, or similar occasion at a fee of $5 per day. All other licenses issued under this act shall be issued on the basis of a fiscal year commencing July first and ending June thirtieth.

Every license issued under this act, effective on or after January 1, 1938, other than a temporary license, shall be renewable unless such license has been revoked, provided that renewal application is made and that the fee therefor is paid on or before the date on which payment thereof is due. If the fee for any license is not so paid, such license is automatically suspended, but may be reinstated by the board within thirty days thereafter upon payment of the amount due and, in addition thereto, of such penalty as the board may by regulation prescribe, not to exceed twenty-five per cent of the annual fee for such license. Unless such license is so reinstated, it is automatically revoked thirty days after the date upon which payment therefor is due, and no license shall be issued to the licensee thereunder except upon a new application. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added provision relating to temporary beer or wine licenses and the second paragraph; omitted second, third and fourth paragraphs of former section providing for license expiration dates and penalties for failure to file renewal applications.

SIGNING AND POSTING OF LICENSES.

SEC. 9. Upon receipt of any license issued hereunder the licensee shall sign said license and shall post the license in a conspicuous place upon the licensed premises. Licenses issued for trains or boats may, in lieu of being posted upon the train or boat for which issued, be posted in such other place in this State as the board shall designate. *(Original section; Statutes 1935, p. 1123.)*

APPLICATION FOR LICENSES.

SEC. 10. To obtain a license under this act application therefor, verified under oath, accompanied by the licensee fee therefor, must be made to the board upon a form prescribed by the board. The application must contain the name of the applicant, and in the case of a copartnership, the names of the individual partners, in the case of a corporation the principal officers and directors, the location of the premises for which a license is applied and such other information as the board may require to assist it in determining whether the applicant and the premises qualify for a license and in addition each application shall contain a statement to the effect that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this act or any regulation of the board applicable to applicant or pertaining to the manufacture, sale or distribution of alcoholic beverages, particularly any of the provisions of section 54 or 55 of said act, and in the event such applicant can not make such statement then such application shall contain a statement of the violation, if any, or reasons which will prevent the applicant from being able to comply with such requirements with respect to such statement. The application shall be signed by the applicant. In the case of a partnership the application shall be signed by each of the partners, and in the case of a

corporation by an officer and under the seal of the corporation. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added provision for verification of license applications; substituted "partners" for "parties" in second sentence; omitted provision for endorsement of license applications by five freeholders; and added requirements that application contain statements as to conviction of felony, violation of the act and of sections 54 and 55 of the act, and for signing of applications by applicants.

INVESTIGATION OF APPLICANT; REFUND OF FEE.

SEC. 11. Upon receipt of an application for a license and the license fee the board shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license. The board must deny an application for a license if either the applicant or the premises for which a license is applied do not qualify for a license under this act.

If an application is denied, three-fourths of the license fee paid, or an amount equal to the license fee paid less ten dollars, whichever is greater, shall be credited on any taxes then due from the applicant under this act, the Retail Sales Tax Act of 1933, as amended, or the Use Tax Act of 1935, as amended, the remaining portion of such amount shall be returned to the applicant and the balance of the license fee shall be deposited in the alcoholic beverage control fund hereinafter created. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added the provision for the crediting of license fee refunds on any taxes due under the act, the Retail Sales Tax Act or the Use Tax Act.

REFUND OF PORTION OF FEE WHERE LICENSE ISSUED IN QUARTER SUBSEQUENT TO QUARTER IN WHICH APPLICATION MADE.

SEC. 11a. If after an application for a license is filed, the license is not issued within the quarter applied for but is issued thereafter, such portion of the license fee as is not required in the quarter when issued shall be credited on any taxes then due from the applicant under this act, the Retail Sales Tax Act of 1933, as amended, or the Use Tax Act of 1935, as amended, and the balance shall be refunded to the applicant. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

CITIZENSHIP QUALIFICATIONS.

SEC. 12. No on-sale distilled spirits license shall be issued to any applicant who is not a citizen of the United States; and where a corporation, partnership or other business association is the applicant no such license shall be issued to it unless the majority of the members of the board of directors and all of its officers who are charged with the duty of managing, directing or conducting said business, are citizens of the United States. *(Original section; Statutes 1935, p. 1123.)*

PREMISES NEAR CHURCHES, SCHOOLS, ETC.

SEC. 13. The board is specifically authorized to refuse the issuanc of on-sale retail licenses for premises located within the immediat vicinity of churches, hospitals, schools and children's public play grounds. *(Original section; Statutes 1935, p. 1123.)*

RESTRICTIONS ON ISSUANCE OF LICENSES FOLLOWING REVOCATION.

SEC. 14. No retail license shall be issued to any applicant fo any premises for which a license has been revoked, during the thre months immediately preceding the filing of such application; provided however, that this section shall not apply where a revocation is th result only of the nonpayment of a license fee. *(Statutes 1937, ch. 758 operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added the las clause.

DISTILLED SPIRITS MANUFACTURERS, WHOLESALERS OR RECTIFIERS MAY HAVE NO MORE THAN ONE LICENSE IN ANY CITY.

SEC. 14.5. Not more than one distilled spirits manufacturer' license, nor more than one rectifier's license, nor more than one distille spirits wholesaler's license shall be issued to any one person in any on city or city and county in the State. *(Statutes 1937, ch. 758; opera tive July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

ZONING ORDINANCES.

SEC. 15. No retail license shall be issued for any premises whic are located in any territory where the exercise of the rights and privi leges conferred by the license is contrary to a valid zoning ordinanc of any county, city and county or municipality unless such premise had been used in the exercise of such rights and privileges at a tim prior to the effective date of any such valid zoning ordinance.

Nothing in this act contained shall be deemed to interfere with th powers of cities, counties, and cities and counties, conferred upon them by Chapter 734, Statutes of 1917, the same being an act of the Legis lature entitled, "An act to provide for the establishment within munici palities of districts or zones within which the use of property, heigh of improvements and requisite open spaces for light and ventilation o such buildings, may be regulated by ordinance." *(Original section Statutes 1935, p. 1123.)*

RESTRICTIONS ON ISSUANCE OF ON-SALE LICENSES.

SEC. 16. No retailer's on-sale license shall be issued to any perso to whom or for any premises for which a manufacturer's, importer's wholesaler's or rectifier's license shall have been issued, and no manu

facturer's, importer's, wholesaler's or rectifier's license shall be issued to any person to whom or for any premises for which a retailer's on-sale license is issued. *(Original section; Statutes 1935, p. 1123.)*

RESTRICTIONS ON ISSUANCE OF OFF-SALE LICENSE TO DISTILLED SPIRITS WHOLESALER OR RECTIFIER.

SEC. 16½. A retail package off-sale distilled spirits license when issued to the holder of a rectifier's or distilled spirits wholesaler's license shall be issued only for the same premises for which such rectifier's or distilled spirits wholesaler's license is issued, except as otherwise provided or permitted in this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

PUBLIC WORKS CAMPS.

SEC. 17. No license, other than an on-sale beer license, shall be issued to any applicant for any premises situated more than one mile outside the limits of an incorporated city or town and within four miles of any camp or establishment of men numbering twenty-five or more, engaged upon or in connection with the construction, repair or operation of any work, improvement or utility of a public or quasi public character; provided, however, that nothing in this section shall be deemed to apply to the renewal of any licenses for any premises which have been established and licensed under this act at least six months prior to the establishment of such camp or establishment of men. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added "other than an on-sale beer license," in first line.

RESTRICTIONS ON ISSUANCE OF ON-SALE BEER AND WINE AND DISTILLED SPIRITS LICENSES.

SEC. 18. Retailer's "on-sale beer and wine licenses" or "on-sale distilled spirits licenses" shall be issued only to bona fide hotels, restaurants, cafes, cafeterias, railroad dining or club cars, passenger ships or other public eating places, or bona fide clubs after such clubs have been lawfully operated for not less than one year. *(Original section; Statutes 1935, p. 1123.)*

BRANDY MANUFACTURER'S LICENSE.

SEC. 19. Brandy manufacturer's licenses shall be issued only to persons holding a wine manufacturer's license. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted the word "Fruit" which appeared before the word "brandy."

INDUSTRIAL ALCOHOL DEALER'S LICENSE.

SEC. 20. Industrial alcohol dealers' licenses shall be issued only to persons to whom, and for premises, for which, either a distilled spirits

manufacturer's, importer's or wholesaler's license has been iss
(Original section; Statutes 1935, p. 1123.)

**RESTRICTIONS ON ISSUANCE OF DISTILLED SPIRITS MA
FACTURER'S AND MANUFACTURER'S AGENT'S LICENS**

SEC. 20½. No distilled spirits license of any kind shall be is
under this act except a distilled spirits manufacturer's or a dist
spirits manufacturer's agent's license to any person or to any of
director, employee or agent of any person who manufacturers dist
spirits within or without this State. No distilled spirits m
facturer's or distilled spirits manufacturer's agent's license shal
held by any person or persons, who holds any ownership or inte
directly or indirectly, by stock ownership, interlocking direc
trusteeship, loan, mortgage or lien on any personal or real propert
otherwise, in any distilled spirits wholesaler's, rectifier's or retai
license; provided, however, that the provisions of this section shall
be deemed to prevent agents or employees of such distilled sp
manufacturer, located without this State, from soliciting orders
distilled spirits within the State; provided further, that the provis
of this section shall not be deemed to prevent the issuance of a dist
spirits wholesale license to any person who, at the time of the effe
date of this act, owns or operates a business which for the five y
immediately preceding said effective date has maintained and oper
in this State a bona fide jobbing and distributing establishment for
sale to retail dealers of goods, wares and merchandise, the major
tion of which business at a time five years preceding the effective
of this act was goods, wares and merchandise other than alcol
beverages. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

**POSTING AND PUBLICATION OF NOTICE OF APPLICATI
NOTICE TO LOCAL AUTHORITIES; HEARING ON
PROTEST OF LOCAL AUTHORITIES.**

SEC. 21. Before commencing to engage in the sale of any alcol
beverage at any premises, notice of intention to so commence, mus
posted in a conspicuous place at the entrances to such prem
Licenses will not be issued for such premises until such notice has
so posted for fifteen consecutive days immediately prior to the issu
of the licenses. The notice herein specified shall be in such form as
board shall prescribe.

Upon the receipt by the board of an original application for
license, written notice thereof shall immediately be mailed by
board to the sheriff, chief of police and district attorney of
locality, to the board of supervisors of the county in which the prem
are situated, if in unincorporated territory, and to the city counci
other governing body of the city or city and county in which
premises are situated, if situated within an incorporated area.

No license shall be issued by the board until at least fifteen
after the mailing by the board of the notices required by this sect

Upon receipt by the board within such fifteen days of a protest by the governing body of the city, city and county, or county to whom such notice has been mailed against the issuance of a license, the board shall not issue such license until after a public hearing is held by the board, or a representative designated by the board, within the county, city and county, or city affected. Notice of the time and place of such hearing shall be given by the board to the governing body and the applicant for the license in such manner as the board shall by regulation prescribe.

All applicants for on-sale licenses shall, within five (5) days after filing their application with the board, cause a notice of such application giving the name or names of the applicant and the premises where the business is to be conducted, to be published once in a newspaper of general circulation in the city in which such premises are situated, or if such premises are not in a city then such publication shall be made in a newspaper of general circulation nearest the premises where the business is to be conducted. The form of such notice shall be prescribed by the board. Affidavit of publication shall be filed with the board prior to the issuance of any license. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added "written" before "notice" in the second paragraph and provisions relating to notice being given to boards of supervisors and city councils or other governing bodies of cities or counties; and added third, fourth and fifth paragraphs.

PAYMENT OF OFF-SALE DISTILLED SPIRITS LICENSE FEES; REPORT OF SALES.

SEC. 22. Any applicant for an off-sale retail package distilled spirits license, shall, at the time of filing application for license, accompany such application with the minimum license fee required or such larger fee as the applicant shall elect. Off-sale retail package distilled spirits licensees shall report quarterly at such time and in such manner as the board may prescribe the amount of distilled spirits sold during the preceding quarter. If any such report shows that the total amount of distilled spirits sold during the year exceeds the amount permitted annually by the license fee already paid the board, the licensee shall accompany such report with such additional license fee as may be unpaid in accordance with the schedule provided in section 5. If any such licensee shall for any reason quit business, he shall within fifteen days after the date of quitting business make a final report and payment of any additional license fee disclosed by his report or by an investigation by the board to be unpaid. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. This section formerly provided for the method of payment of varying license fees for both wine manufacturers and off-sale distilled spirits licenses. Stats. 1937, ch. 758, amended section 22 to provide for the method of payment of license fees by off-sale distilled spirits licensees only. Section 22a was added to provide for the payment of license fees by wine manufacturers. Sections 22b and 22c were formerly contained in this section.

PAYMENT OF WINE MANUFACTURER'S LICENSE FEES; REPORT OF MANUFACTURE.

SEC. 22a. Any applicant for a wine manufacturer's license sha at the time of filing application for license, accompany such applic tion with a license fee based upon a reasonable estimate of the amou of wine gallonage to be manufactured by such applicant. Perso holding wine manufacturers' licenses shall report annually at the e of each fiscal year, at such time and in such manner as the board m prescribe, the amount of wine manufactured by them during the fis year.

If the total amount of wine manufactured during the year excee the amount permitted annually by the license fee already paid t board, the licensee shall pay such additional license fee as may unpaid in accordance with the schedule provided in section *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 22.

ARBITRARY ASSESSMENT OF FEES FOR FAILURE TO FILE REPORTS.

SEC. 22b. Failure to report the amount of alcoholic beverag manufactured or sold as herein required and to pay such addition license fees when due within ten days of the date set by the boar shall be considered a violation of this act, and shall also subject t licensee to an arbitrary assessment of such license due by the boar *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 22.

RESTRICTIONS ON ISSUANCE OF LICENSES WHERE REPORTS AND PAYMENTS OF LICENSE FEES HAVE NOT BEEN MADE.

SEC. 22c. Failure to make a final report and payment of a license due at the end of any tax year shall operate to prevent t board from issuing any license to any delinquent licensee. *(Statut 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 22.

DATE WHEN FILING OF REPORTS AND PAYMENTS OF TAXES AND FEES DEEMED TO BE MADE.

SEC. 22d. Where tax reports or payment of excise taxes or licen fees are required to be made on or by specified dates, they shall deemed to have been made at the time they are filed with or paid to t board or other proper official or, if sent by mail, on the date shov by the United States postmark on the envelope containing such repo or payment. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

EXCISE TAX ON BEER AND WINE.

SEC. 23. An excise tax is hereby imposed upon all beer and wine sold in this State by a manufacturer or importer, except as otherwise in this act provided, at the following rates:

(a) On all beer, sixty-two cents for every barrel containing thirty-one gallons, and at a proportionate rate for any other quantity; (b) On all natural dry wines one cent per wine gallon and at a proportionate rate for any other quantity; (c) on all other still wines two cents per wine gallon and at a proportionate rate for any other quantity; (d) on champagne, sparkling wine, except sparkling hard cider, whether naturally or artificially carbonated one and one-half cents per half pint or fraction thereof, three cents per pint or fraction thereof greater than one-half pint, six cents per quart or fraction thereof greater than one pint; (e) on sparkling hard cider two cents per wine gallon and at a proportionate rate for any other quantity. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, substituted "except as otherwise in this act provided" in place of "on or after July 1, 1935"; added provision for one cent per gallon tax on natural dry wines which were formerly taxed at two cents rate; added subdivisions (d) and (e); subdivision (c) formerly read "On champagne, or sparkling wine, whether naturally or artificially carbonated, three cents per pint or fraction thereof."

TAX EMEMPTION FOR BEER AND WINE CONSUMED BY EMPLOYEES OF MANUFACTURERS AND IMPORTERS.

SEC. 23a. Beer and wine consumed by employees of manufacturers or importers upon the premises of such manufacturers and importers shall be exempt from the excise tax mentioned in section 23 hereof under such rules and regulations as the board may prescribe. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

PRESUMPTION THAT BEER AND WINE HAS BEEN SOLD BY MANUFACTURER OR IMPORTER; EXCEPTIONS; EXEMPTIONS.

SEC. 23b. It shall be presumed, for the purposes of this act, that all beer and wine manufactured in this State by a manufacturer, or delivered to a manufacturer or importer here, has been sold in this State by such manufacturer or importer unless proven to the satisfaction of the board, in verified reports on forms prescribed by the board, that such alcoholic beverages (1) are still in the possession of such licensee or (2) have been sold and delivered to another manufacturer of such alcoholic beverages, or (3) have been exported without this State or sold for export by the licensee making the report, or (4) prior to the termination of possession such alcoholic beverages have been lost through unintentional destruction, or (5) were spoiled beer or wine which was destroyed in the presence of a representative of the board or of the United States Bureau of Internal Revenue, or (6) prior to

the termination of possession have been unaccountably lost, but such unaccounted for loss shall not exceed a tolerance to be fixed by the board; or (7) are beer or wine otherwise exempted from taxation under this act.

No excise tax mentioned in section 23 hereof shall be or is imposed by this act upon any wine or beer exported by a licensed manufacturer or importer from within this State to any place without the State or sold by a licensed manufacturer or importer for export from within this State to any place without the State, and actually exported from this State within thirty days from the date of such sale or upon any wine or beer specifically mentioned in any subdivision (1) to (7) of this section, and no excise tax mentioned in section 23 hereof shall be or is imposed by this act upon any transaction whereby any wine or beer is sold by a licensed manufacturer to another licensed manufacturer.

Any claim for exemption from excise taxes under this section must be made to the board, in such manner as the board shall prescribe. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

EXCISE TAX ON DISTILLED SPIRITS.

SEC. 24. An excise tax is hereby imposed upon all distilled spirits sold in this State by rectifiers or wholesalers thereof, at the following rates:

On all distilled spirits of proof strength or less, two cents on each bottle containing two ounces or fraction thereof; five cents on each bottle containing eight ounces or fraction thereof greater than two ounces; ten cents on each bottle containing one pint or fraction thereof greater than a half-pint; sixteen cents on each bottle containing one-fifth gallon or fraction thereof greater than one pint; twenty cents on each bottle containing one quart or fraction thereof greater than one-fifth gallon; forty cents on each bottle containing one-half gallon or fraction thereof, greater than one quart; eighty cents on each bottle containing one gallon or fraction thereof greater than one-half gallon and at a proportionate rate for any quantity.

All distilled spirits in excess of proof strength shall be taxed at double the above rate. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, substituted "by rectifiers or wholesalers thereof" for "on and after July 1, 1935" and added "and at a proportionate rate for any quantity" at the end of the second paragraph.

Federal Military Reservations.—The sale of distilled spirits to a person on a military reservation over which the Federal Government has exclusive jurisdiction is subject to the tax imposed by the Alcoholic Beverage Control Act. (*McKesson and Robbins, Inc., vs. Collins et al* (1937), 88 C. A. D. 203.)

PRESUMPTION THAT DISTILLED SPIRITS HAVE BEEN SOLD BY WHOLESALERS OR RECTIFIERS; EXCEPTIONS.

SEC. 24.2. It shall be presumed that all distilled spirits acquired by any rectifier or distilled spirits wholesaler have been sold in this State by such rectifier or wholesaler unless proven to the satisfaction of

the board, in verified reports on forms prescribed by the board, that such distilled spirits are (1) still in the possession of such licensee, or (2) that such distilled spirits have been sold or delivered to another licensed distilled spirits manufacturer, rectifier, importer or wholesaler, or (3) that such distilled spirits have been exported without this State or sold for export by the licensee making the report and actually exported from this State within thirty days from the date of such sale, or (4) that prior to the termination of possession such distilled spirits have been lost through unintentional destruction, or (5) that prior to the termination of possession there has been an unaccounted for loss, but such unaccounted for loss shall not exceed a tolerance to be fixed by the board, or (6) that such distilled spirits have been consumed as samples on the licensed premises; or (7) that such distilled spirits are otherwise exempt from taxation under this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

"SALE" INCLUDES TRANSFER FOR SALE UNDER A RETAILER'S LICENSE.

SEC. 24.3. The word "sale" as used in sections 23 and 24 shall include, in addition to the definition in section 2 of this act, the transaction whereby alcoholic beverages are transferred, with or without consideration, by a licensee holding one type of license to himself for purposes of sale under a retailer's license held by himself. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

RETAIL DISTILLED SPIRITS LICENSEES REQUIRED TO KEEP RECORDS OF PURCHASES.

SEC. 24.4. On- or off-sale distilled spirits licensees shall keep books of accounts in which shall be kept records of all distilled spirits acquired by such licensees, or in lieu thereof shall preserve all original bills and invoices for distilled spirits acquired. Such records shall be in the form prescribed by the board and shall show at all times all purchases of distilled spirits made during the previous two years. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

UNLAWFUL TO POSSESS DISTILLED SPIRITS IN PACKAGES NOT BEARING EXCISE STAMPS; EXCEPTION AS TO CERTAIN LICENSEES.

SEC. 24.5. Any person, except a distilled spirits manufacturer, distilled spirits manufacturer's agent, brandy manufacturer, rectifier, importer or wholesaler, who shall be found in possession of distilled spirits, the packages of which do not bear stamps, as provided elsewhere in this act, evidencing payment of the excise tax thereon, shall be guilty of a misdemeanor and shall be subject to the payment of the excise tax due on the distilled spirits so found, together with a penalty

equal to the amount of excise tax due. Such distilled spirits shall seized by the board.

The provisions of this section shall have no application to a distilled spirits stored for the account of any licensee, other than retail licensee, at the licensed public warehouse of the holder of a publ warehouse license. *(Statutes 1937, ch. 758; operative July 1, 1937*

History.—Added by Stats. 1937, ch. 758.

BOND OF DISTILLED SPIRITS MANUFACTURERS, WHOL SALERS, IMPORTERS AND RECTIFIERS.

SEC. 24.7. Each person licensed as a manufacturer, rectifier wholesaler of distilled spirits shall file with the board a bond in t penal sum of five thousand dollars, and each person licensed as imported of distilled spirits shall file with the board an addition bond in the penal sum of five thousand dollars, duly executed by suc person as principal and a corporation, such as is mentioned in sectio 1056 of the Code of Civil Procedure, as surety, payable to the peop of the State of California, conditioned upon the payment of all exci taxes and penalties assessed against or imposed upon such license arising out of this act. Any person licensed as an importer of di tilled spirits, and who has filed with the board a bond as provided b this section, shall not be required to file an additional bond by reaso of the fact that said person is also licensed as an importer of wine an beer notwithstanding the provisions of section 25 of this act.

Each rectifier or wholesaler of distilled spirits who is the holde of more than one rectifier's or distilled spirits wholesaler's licens shall file with the board a bond or bonds in the additional penal sum o one thousand dollars for each of the additional rectifier's or distille spirits wholesaler's licenses held by such rectifier or wholesaler. Th bond shall be in such form as the board shall prescribe. *(Statute 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

BOND OF BEER AND WINE MANUFACTURERS AND IMPORTERS.

SEC. 25. Every person who engages in business as, or becomes manufacturer or importer of beer or wine, as defined in this act, shal be required by the board to file with said board a bond duly executed by such person as principal and a corporation such as is mentioned in section 1056 of the Code of Civil Procedure in this State, as surety payable to the people of the State of California, conditioned upon the payment of all excise taxes and penalties assessed against or imposed upon such person, arising out of this act.

The bond shall contain the provisions and be in the form substantially as follows:

"Know all men by these presents:

That we, _____, as principal, and _____ a corporation, duly organized and doing business under and by virtue of the laws of_____,

and duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as surety, are held and firmly bound unto the people of the State of California in the sum of _____ dollars ($_____), lawful money of the United States of America, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

Whereas, the above bounden principal has made application to the State Board of Equalization of the State of California for a license authorizing said principal to engage in business as a manufacturer or importer of beer or wine within the meaning of the Alcoholic Beverage Control Act and amendments thereto, and

Whereas, under the terms of said act a bond is required of said principal and good and sufficient surety, payable to the people of the State of California, conditioned upon the payment to the State of California of all of the excise taxes and penalties assessed against or imposed upon said principal arising out of said act.

Now therefore, if the above bounden principal shall pay all excise taxes and penalties assessed against or imposed upon said principal arising out of said act, or if the board, within thirty days after any default by said principal in the payment of any such tax or penalty shall fail to notify the surety thereof, personally or by mail, then this obligation shall be null and void: otherwise to remain in full force and effect.

That said bond shall remain in force and effect until the surety or sureties are released from liability by said board or until said bond is canceled by said surety or sureties as hereinafter provided.

The surety herein reserves the right to withdraw as such surety, except as to any liability already incurred or accrued hereunder, and may do so upon giving written notice of such withdrawal to the State Board of Equalization; provided, however, that no withdrawal shall be effective for any purpose until thirty days shall have elapsed from and after receipt of such notice by said board; and further provided, that no withdrawal shall in anywise affect the liability of said surety arising out of any sale of beverage made by the principal herein prior to the expiration of such period of thirty days, regardless of whether or not the excise tax based upon such sale shall have been due prior to the expiration of such period.

Signed and sealed this _____ day of _____, 193__.

_____
Principal.

By_____

_____
Surety.

By_____"

The total amount of the bond or bonds required of any such manufacturer or importer shall be fixed by the board and may be increased

or reduced by said board at any time subject to the limitations herein provided. In fixing the total amount of the bond or bonds required of any such manufacturer or importer, the board must require a bond or bonds equivalent in total amount to one and one-half times his estimated monthly excise tax determined in such manner as said board may deem proper; provided, that the total amount of the bond or bonds required of any such manufacturer or importer shall never be less than five hundred dollars. *(Original section; Statutes 1935, p. 1123.)*

REPORTS OF BEER AND WINE MANUFACTURERS AND IMPORTERS.

SEC. 26. Every manufacturer or importer of beer or wine taxable under this act shall render to the board, on or before the twentieth day of each succeeding month, a verified statement of the quantity of such beer or wine sold by such manufacturer or importer during the preceding calendar month. Such statement shall be in such form as the board may prescribe, together with such other information the board may require; provided, that in the case of wine such statement shall be filed in accordance with the provisions of section 23b of this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, substituted "beer or wine" in place of "alcoholic beverages" and "twentieth day of each succeeding month" for "tenth day of August, 1935, and on or before the tenth day of each month thereafter"; and added the proviso clause at the end of the section. The section formerly contained three other paragraphs which are the present sections 26a, 26b and 26c with amendments thereto.

ASSESSMENT OF EXCISE TAX WHEN REPORT NOT MADE; PENALTY.

SEC. 26a. If any manufacturer or importer of beer or wine shall fail, neglect or refuse to file said report, within the time prescribed for filing such report, the board may note such failure, neglect or refusal upon the tax roll hereinafter described, and may estimate the amount of alcoholic beverage sold by said manufacturer or importer, assessing the excise tax thereon, adding to said excise tax a penalty of fifteen per cent thereof for failure, neglect, or refusal to report. Such action of the board shall be final, and subject only to review by a court of competent jurisdiction. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. This section was formerly a part of section 23 except that "of beer or wine" was inserted after "importer" and "may" was substituted for "must" before "note" and "estimate."

ASSESSMENT ROLL.

SEC. 26b. The board shall, on or before the last day of the month when the report is due, assess the excise tax due hereunder, and prepare and complete an assessment roll showing the amount of the excise tax assessed against each manufacturer and importer of beer or wine

and immediately deliver such assessment roll to the State Controller. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. This section was formerly contained in section 26 except that the date on or before which the board must assess the excise tax was changed from the tenth day of the month to the last day of the month.

PAYMENT OF EXCISE TAX ON BEER AND WINE.

SEC. 26c. The excise tax herein required to be paid by the manufacturer or importer of beer or wine shall be payable in monthly installments to the State Controller for each and every calendar month. The amount of such excise tax for each month shall be paid on or before the twentieth day of the second calendar month following the month in which such excise tax accrued, and if not paid prior thereto, shall become delinquent at midnight of said day, and ten per cent penalty shall be added thereto for delinquency. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. This section was formerly contained in section 26 except that "of beer or wine" was inserted after "importer" and the due date for payment of the tax was changed from the tenth day to the twentieth day of the second calendar month and "midnight" was substituted for "five o'clock in the afternoon."

INVESTIGATIONS BY BOARD; SUBSEQUENT ASSESSMENTS; PETITION FOR HEARING; OVERPAYMENT OF TAX; REFUNDS; DISTILLED SPIRITS TAX LEVIES.

SEC. 27. If any examinations or investigations made by the board shall disclose that any reports theretofore filed with the board by beer or wine manufacturers or importers have shown incorrectly the amount of beer or wine sold or the excise tax accruing thereon, the board shall have the power, and is hereby authorized, to make such changes by a subsequent assessment as may be necessary to correct the errors disclosed. The board shall give to any such manufacturers or importers notice of any such subsequent assessment and the amount thereof and any such manufacturer or importer against whom any such subsequent assessment has been made may petition for a rehearing upon such subsequent assessment within thirty days after service of the notice thereof, and the board shall reconsider and upon reconsidering such subsequent assessment shall grant any such manufacturer or importer an oral hearing and shall give any such licensee ten days notice of the time and place thereof; which place shall be either at Sacramento or at the city of licensee's premises or approximate to such premises if not located in a city. The board shall have the power to continue the hearing from time to time as may be necessary. Notice of the board's order or decision upon a petition for rehearing shall be served upon the licensee and if the subsequent assessment is affirmed it shall become due and payable at the time of such service of the notice thereof.

The board may likewise in any assessment roll give credit to any manufacturer or importer for overpayments of excise tax shown to the

satisfaction of the board to have been paid by any such manufacturer or importer or for excise taxes paid by any such manufacturer or importer upon beer or wine returned to such manufacturer or importer after sale or transfer of possession and which has become unsalable without fraud, connivance or collusion on the part of such manufacturer or importer.

If the board determines that any tax or penalty has been paid more than once, or has been erroneously or illegally collected or computed, and if such overpayment, collection or computation for any reason can not be adjusted or corrected in subsequent assessments as provided in this section, the board shall certify to the State Board of Control the amount collected in excess of what was legally due, from whom it was collected, or by whom paid, and if approved by that board the same shall be credited on any taxes then due fro. he manufacturer or importer under this act and the balance shall be refunded to the manufacturer or importer, but no such credit or refund shall be allowed after three years from the date of overpayment.

If, after giving effect to the provisions of section 24.2, any examinations or investigations made by the board shall disclose that the amount of excise stamps purchased from the board by any rectifier or wholesaler is not sufficient to represent payment of the excise tax imposed upon the sale of distilled spirits sold by such rectifier or wholesaler, the board shall have the power, and is hereby authorized to make a levy against such rectifier or wholesaler in the amount of the deficiency in the payment of the distilled spirits excise tax so disclosed. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted the first paragraph of the former section; added "beer or wine" before "manufacturers" and before "sold"; and added all provisions following the first sentence.

NOTICE OF DISTILLED SPIRITS EXCISE TAX LEVY.

SEC. 27a. The board shall give to any manufacturer, wholesaler, rectifier or importer of distilled spirits against whom any levy is made under the provisions of section 27 of this act notice of such levy. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

PETITION FOR RELEVY.

SEC. 27b. Any wholesaler or rectifier against whom a levy is made by the board under the provisions of sections 27 or 27a hereof may petition for a relevy thereof within 15 days after service of the notice thereof. If such a petition for relevy is not filed within said 15 day period the amount of the levy becomes final at the expiration thereof. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

HEARING ON PETITION FOR RELEVY; NOTICE OF DECISION.

SEC. 27c. If a petition for relevy under section 27b is filed within said 15 day period the board shall reconsider the levy, and if the petitioner has so requested in his petition, shall grant said petitioner an oral hearing and shall give the petitioner 10 days notice of the time and place thereof. The board shall have the power to continue the hearing from time to time as may be necessary.

Notice of the board's order or decision upon a petition for relevy shall be served upon the petitioner. Any levy made by such order or decision of the board shall become due and payable at the time of the service of the notice thereof. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

PAYMENT OF DISTILLED SPIRITS EXCISE TAX LEVY.

SEC. 27d. Upon payment to the board of the amount of any levy paid under the provisions of sections 27, 27b or 27c hereof the board shall credit the distilled spirits excise tax stamp account of the wholesaler or rectifier against whom the levy was made with the amount of such payment for the period for which such levy was made. Thereupon, the board shall set aside distilled spirits excise stamps in an amount equivalent to the amount of such levy so paid. Such distilled spirits excise tax stamps so set aside shall not be delivered to the wholesaler or rectifier against whom the levy was made, but within 30 days from the payment of the amount of the levy the board or its employees shall destroy the same in the presence of a representative of the Department of Finance. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

PENALTY FOR REFUSAL TO PERMIT EXAMINATION AND FOR ALTERING OR FALSIFYING RECORDS.

SEC. 28. Any person refusing to permit the board or any of its representatives to make any inspection or examination for which provision is made in this act or failing to keep books of account as may be prescribed by the board or failing to preserve such book for the inspection of the board for such time as the board may deem necessary, and any person altering, canceling or obliterating entries in such books of account for the purpose of falsifying the records of sales of alcoholic beverages made under this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

Any person who shall erase, remove, obliterate, destroy or render illegible in any manner, any serial numbers, stamps, marks, brands, legends or other information required by Federal or State law to be attached or placed upon any packages or original cases containing

alcoholic beverages, before the contents of such packages or cases h
been entirely removed shall be guilty of a misdemeanor. *(Stat*
1937, ch. 758; operative July 1, 1937.)

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, inserted examination" after "inspection" and added the second paragraph.

EXEMPTION OF SALES TO ANOTHER MANUFACTURER IMPORTER.

SEC. 29. Repealed by Statutes 1937, ch. 758; operative July 1937.

History.—Enacted Stats. 1935, p. 1123, providing for exemption of ex tax on sales of alcoholic beverages made by one manufacturer or importe another manufacturer or importer.

ACTION TO COLLECT DISTILLED SPIRITS TAX DEFICIEN

SEC. 30. The board is authorized to bring such legal actions may be necessary to collect any deficiency in the tax required to paid under section 24 of this act and, upon the board's request, Attorney General shall bring such actions. *(Statutes 1937, ch. 7 operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted the former provisions of the section and substituted the present section. former section provided for the exemption of the excise tax on export sale alcoholic beverages.

SUMMARY ACTION TO COLLECT BEER AND WINE TAX.

SEC. 31. In any case in which any tax, interest or penalty impo under section 23 of this act is not paid when due, the Controller s notify the board and may file in the office of the county clerk of S ramento County or any other county a certificate specifying amount of the tax, interest and penalty due, the name and last kno address of the manufacturer or importer of the beer or wine lia for same, that the board has complied with all the provisions of act, in relation to the computation and levy of the tax and a requ that judgment be entered against such manufacturer or importer the amount of the tax, interest and penalty set forth in the certific The county clerk immediately upon the filing of such certificate sh enter a judgment for the people of the State of California agai such manufacturer or importer in the amount of the tax, interest penalty set forth in the certificate. The judgment may be filed by county clerk in a loose-leaf book entitled "Special Judgments State Excise Tax." *(Statutes 1937, ch. 758; operative July 1, 193*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, inse "section 23" after "under" and added "of the beer or wine"; and omitted but the first paragraph of the former section. The subsequent paragra of the former section are contained in the present sections 31a, 31b, 31c, 31e, 31f and 31g with amendments thereto.

LIEN OF TAX.

SEC. 31a. An abstract of such judgment or a copy thereof m be recorded with the county recorder of any county and from the t

of such recording, the amount of the taxes, interest and penalty therein set forth shall constitute a lien upon all the real property of such manufacturer or importer in such county, owned by him or which he may afterwards and before the lien expires acquire, which lien shall have the force, effect and priority of a judgment lien. Execution shall issue upon such a judgment upon the request of the Controller in the same manner as execution may issue upon other judgments, and sales shall be held under such execution as prescribed in the Code of Civil Procedure. In all proceedings under this section the Controller shall be authorized to act on behalf of the people of the State of California. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 31.

NOTICE TO WITHHOLD PAYMENTS TO DELINQUENT BEER AND WINE MANUFACTURERS AND IMPORTERS.

SEC. 31b. In the event that any such manufacturer or importer is delinquent in the payment of the excise tax herein provided for, the Controller shall notify the board forthwith and may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control, any credits or other personal property belonging to such manufacturer or importer, or owing any debts to such manufacturer or importer, at the time of receipt by them of such notice, and thereafter any person so notified shall neither transfer nor make other disposition of such credits, other personal property or debts until the Controller shall have consented to a transfer or disposition, or until twenty days shall have elapsed from and after the receipt of such notice. All persons so notified must, within five days after receipt of such notice, advise the Controller of any and all such credits, other personal property or debts, in their possession, under their control or owing by them, as the case may be. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 31.

SEIZURE AND SALE OF PROPERTY OF DELINQUENT MANUFACTURERS AND IMPORTERS.

SEC. 31c. Whenever any such manufacturer or importer shall be delinquent in the payment of the excise tax herein provided for, the Controller or his duly authorized representative may proceed forthwith to collect the excise tax due from such manufacturer or importer in the following manner: The Controller shall seize any property, real or personal, of the taxpayer, and thereafter sell at public auction such property so seized, or a sufficient portion thereof, to pay the excise tax due hereunder, together with any penalty or penalties imposed hereby for such delinquency, and any and all costs that may have been incurred on account of such seizure and sale. Notice of such intended sale and the time and place thereof, shall be given to such delinquent manufacturer or importer and to all persons appearing of record to have an interest in such property, in writing at least ten days before the date set for such sale by inclosing such notice in an envelope

addressed to said manufacturer or importer at his last known residence or place of business in this State if any, and depositing same in the United States registered mail, postage prepaid, and by publication for at least ten days before the date set for such sale in a newspaper of general circulation published in the county or city and county in which the property seized is to be sold; provided, however, that if there be no newspaper of general circulation in such county or city and county, then by the posting of such notice in three public places in such county or city and county for said ten day period. The said notice shall contain a description of the property to be sold, together with a statement of the amount of the excise taxes, penalties and costs, the name of the manufacturer or importer and the further statement that, unless such excise taxes, penalties and costs are paid on or before the time fixed in said notice for such sale, said property, or so much thereof as may be necessary, will be sold in accordance with law and said notice. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 31.

PROCEEDS OF SALE.

SEC. 31d. At any such sale, the property shall be sold by the Controller or by his duly authorized agent in accordance with law and said notice, and the Controller shall deliver to the purchaser a bill of sale for the personal property, and a deed for any real property so sold, and such bill of sale or deed shall vest title in the purchaser subject to a right of redemption as prescribed in the Code of Civil Procedure upon sales of real property on execution. The unsold portion of any property so seized may be left at the place of sale at the risk of such manufacturer or importer. If, upon any such sale, the moneys so received shall exceed the amount of all license taxes, penalties and costs due the State from such manufacturer or importer, any such excess shall be returned to such manufacturer or importer, and his receipt therefor obtained; provided, however, that if any person having an interest in or lien upon the property has filed with the Controller prior to any such sale notice of such interest said Controller shall withhold any such excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If, for any reason, the receipt of such manufacturer or importer shall not be available, the Controller shall deposit such excess moneys with the State Treasurer, as trustee for such owner, subject to the order of such manufacturer or importer, his heirs, successors or assigns. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 31.

SUIT TO COLLECT BEER AND WINE TAX.

SEC. 31e. The Controller must also immediately transmit notice of such delinquency to the Attorney General who shall at once proceed to collect all sums due to the State from any such manufacturer or importer by bringing suit against the necessary parties to effect forfeiture of the bond or bonds of the manufacturer or importer, reduc-

ing any deficiency to judgment against the manufacturer or importer. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 31.

COLLECTION REMEDIES CUMULATIVE.

SEC. 31f. It is expressly provided that the foregoing remedies of the State under sections 31, 31a, 31b, 31c, 31d and 31e shall be cumulative and that no action taken by the board, Controller or Attorney General shall be or be construed to be an election on the part of the State or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. This section was formerly contained in section 31 except that "under sections 31, 31a, 31b, 31c, 31d and 31e" was added by Stats. 1937, ch. 758.

ASSESSMENT ROLL PRIMA FACIE EVIDENCE OF EXCISE TAX.

SEC. 31g. In any suit brought to enforce the rights of the State under section 31f the assessment roll prepared by the board pursuant to section 26 of this act, or a copy of so much thereof as is applicable in such suit, duly certified by the Controller showing unpaid excise taxes assessed against any such manufacturer or importer, shall be prima facie evidence of the assessment of the excise tax, the delinquency thereof, the amount of the excise tax, penalties and costs due and unpaid to the State, that such manufacturer or importer is indebted to the people of the State of California in the amount of such excise tax and penalties therein appearing unpaid and that all the forms of law in relation to the assessment and levy of such excise tax have been fully complied with by all persons required to perform administrative duties under this act, but the correctness of such assessment or the fact as to whether or not such excise taxes are or are not due shall be reviewed and determined by the court in any such action. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. This section was formerly contained in section 31 except that Stats. 1937, ch. 758, added "under section 31f" and the last clause of the section.

ACTION TO RECOVER TAX.

SEC. 32. Any action to recover any excise tax levied pursuant to this act and paid under protest must be instituted within sixty days after the payment of such excise tax, and failure to bring suit within said sixty days shall constitute waiver of any and all demands against this State on account of alleged overpayment of excise taxes hereunder. No grounds of illegality of the excise tax shall be considered by the court other than those set forth in the protest filed at the time of the payment of the excise tax.

If in any such action judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any excise taxes due

from the plaintiff under this act, and the balance of the amount of the judgment shall be refunded to the plaintiff. In any such judgment, interest shall be allowed at the rate of six per cent per annum upon the amount of excise tax found to have been illegally collected from the date of payment of such excise tax to the date of allowance of credit on account of such judgment or to a date preceding the date of the refund warrant by not more than thirty days, such date to be determined by the Controller.

In no case shall any judgment be rendered in favor of the plaintiff in any action brought against the State Treasurer to recover any excise tax paid hereunder, when such action is brought by or in the name of an assignee of the manufacturer or importer paying said excise tax, or by any person, other than the person who has paid such excise tax. *(Original section; Statutes 1935, p. 1123.)*

DISTILLED SPIRITS EXCISE STAMPS.

SEC. 33. The tax imposed by section 24 of this act upon the sale of distilled spirits shall be collected from rectifiers and wholesalers of distilled spirits and payment of the tax shall be evidenced by stamps issued by the board to such rectifiers and wholesalers. In exceptional instances the board may sell such stamps to on- and off-sale distilled spirits licensees and other persons. No rectifier or wholesaler of distilled spirits, shall purchase distilled spirits excise stamps, except from the board or its duly authorized agents, nor dispose of such excise stamps, except to on- or off-sale distilled spirits licensees when making sales of distilled spirits to such licensees as provided in section 32b. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. This section formerly contained five paragraphs most of the provisions of which were placed in sections 33a, 33b and 33c by Stats. 1937, ch. 758. The provisions of the section as amended were added by Stats. 1937, ch. 758. The section formerly provided for the sale of excise stamps to manufacturers and importers as well as to rectifiers and wholesalers.

CHARACTER OF STAMPS; BOARD TO KEEP RECORDS.

SEC. 33a. The excise stamps shall be of such size, type and character as the board shall determine and shall be of a character, design and process which will give the State the maximum amount of protection against counterfeiting. The board shall have full charge and control of the issuance, securing, or purchase and of the sale of all such stamps and shall keep a record of all stamps sold. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 33. This section was formerly contained in section 33 and is substantially the same as the former language.

Contract for stamps.—The State Board of Equalization is not authorized by section 33 of the act to enter into a valid contract for the printing and purchasing of excise stamps without first obtaining the approval of the Department of Finance as provided in section 675 (a) of Political Code. (*Ireland* vs. *Riley et al* (1935), 11 Cal. App. (2d) 70.)

DELIVERIES OF DISTILLED SPIRITS TO RETAILERS MUST BE ACCOMPANIED WITH STAMPS.

SEC. 33b. All distilled spirits delivered by any rectifier or wholesaler of distilled spirits to any person holding an on- or off-sale distilled spirits license issued under this act, must be accompanied by a sufficient number of stamps purchased from the board, to stamp the packages containing such distilled spirits. Every rectifier or wholesaler of distilled spirits who delivers distilled spirits in violation of this section shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 33. This section was formerly contained in section 33.

ATTACHING AND CANCELING OF STAMPS.

SEC. 33c. Such stamps shall be attached by the holders of on- or off-sale distilled spirits licenses issued under this act immediately upon opening the original case in which the distilled spirits were packed and in which such distilled spirits were purchased from the rectifier or wholesaler. At the time such stamps are attached to the packages of distilled spirits, they shall immediately be canceled by indelibly writing or stamping thereon the license number of the licensee attaching the stamp and the date of cancellation. In the case of distilled spirits not in original cases at the time of purchase the stamps shall be attached immediately upon bringing such distilled spirits upon the premises for which such on- or off-sale licenses are issued. Any on- or off-sale distilled spirits licensee who shall fail to attach and cancel stamps as provided by this section shall be guilty of a misdemeanor.

The board shall prescribe rules and regulations governing the handling, affixing, canceling, and other matters pertaining to distilled spirits excise stamps. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 33. The first and third sentences of this section were formerly contained in the first paragraph of section 33. The second sentence was formerly contained in the last paragraph of section 33 as it formerly read. The last two sentences were added by Stats. 1937, ch. 758.

RETURN OF DISTILLED SPIRITS TO WHOLESALER OR RECTIFIER; ISSUANCE OF NEW STAMPS; REFUNDS.

SEC. 33d. Whenever distilled spirits are returned by a retail licensee to the rectifier or wholesaler from whom such distilled spirits were purchased and excise stamps are attached to the containers of such distilled spirits and canceled as provided in this act, the rectifier or wholesaler may petition the board to issue new stamps to replace the stamps so canceled. The board shall direct an agent to investigate the matter and if such agent, after investigation, finds that new stamps should be issued, such agent shall supervise the removal and destruction of such stamps. The board may then issue new stamps to replace those destroyed.

When a licensee shall possess distilled spirits excise tax stamp which are unaffixed to packages and which shall have been damaged s as to be unusable, or shall possess distilled spirits excise stamps o denominations no longer used by him, the board may at their discretio either exchange such distilled spirits excise stamps for others of th same or other denominations or refund to the licensee the origina value of the stamps. *(Statutes 1937, ch. 758; operative July 1, 1937.*

History.—Added by Stats. 1937, ch. 758.

BOARD MAY REPURCHASE STAMPS.

SEC. 33e. The board, in its discretion, may refund the value an repurchase excise stamps from any distilled spirits manufacturer, rec tifier, importer, or wholesaler, when such licensee discontinues business *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

UNLAWFUL SALES, DELIVERIES OR POSSESSION OF DIS TILLED SPIRITS; SEIZURE OF DISTILLED SPIRITS.

SEC. 34. (a) It shall be unlawful for any unlicensed person t have in his possession any distilled spirits upon the containers of whic stamps are required to be attached and canceled under this act unles the stamps so required are so attached and canceled as required b this act.

(b) It shall be unlawful for any unlicensed person or for an on- or off-sale distilled spirits licensee to sell any distilled spirits unles the stamps required by this act to be attached to the packages of such distilled spirits are so attached and canceled as required by this act.

(c) It shall be unlawful for any on-sale distilled spirits license to serve or remove distilled spirits from any packages unless the stamp required by this act to be attached to the packages are so attached an canceled as required by this act.

(d) It shall be unlawful for any person to deliver to the premise of any on- or off-sale distilled spirits licensee or for any on- or off-sal distilled spirits licensee to have upon his licensed premises or for an person to possess any distilled spirits unless the container of such dis tilled spirits bear a label plainly indicating the quantity and proo strength of the contents of such containers and the name of the manu facturer, rectifier, importer or wholesaler thereof. To the extent tha such information is blown into the glass of any such container, it shal constitute a compliance with this paragraph.

(e) It shall be unlawful for any rectifier or wholesaler of dis tilled spirits to deliver to the premises of any on- or off-sale distilled spirits licensee or for any on- or off-sale distilled spirits licensee to sel or have in his possession at the licensed premises distilled spirits in packages containing more than one gallon and, after December 31 1937, in packages containing less than one-half pint; except that the provisions of this paragraph shall not apply to packages of distilled spirits in containers less than one-half pint which are sold and delivered

to railroad, sleeping car or steamship companies for use and consumption on trains or boats.

(f) It shall be unlawful for any unlicensed person or any on- or off-sale distilled spirits licensee to have in his possession any distilled spirits in packages or containers larger than one gallon, unless such distilled spirits have been sold and delivered to such person or licensee by the holder of an industrial alcohol dealer's, distilled spirits manufacturer's, brandy manufacturer's or rectifier's license for use in the trades, professions, or industries.

(g) It shall be unlawful for any industrial alcohol dealer, distilled spirits manufacturer, brandy manufacturer or rectifier to deliver undenatured ethyl alcohol or other distilled spirits in packages of more than one gallon for use in the trades, professions or industries, unless the packages bear a label plainly stating the true and correct name and address of such industrial alcohol dealer, distilled spirits manufacturer, brandy manufacturer or rectifier.

Any person violating any of the foregoing provisions of this section shall be guilty of a misdemeanor.

The board may seize any distilled spirits sold, served, removed, possessed, delivered, or held in any manner whatsoever in violation of this section. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added paragraphs (a), (f) and (g) and omitted provision for summary destruction of distilled spirits sold, possessed or delivered in violation of the section; added provisions relating to violations by unlicensed persons and for violation of paragraph (e) by retail licensees; added provisions prohibiting packages of distilled spirits of less than one-half pint; and added to paragraph (d) the words "rectifier, importer or wholesaler" and the provision for blowing information into the glass of distilled spirits containers.

UNLAWFUL SALE OR POSSESSION OF STAMPS.

SEC. 35. It shall be unlawful for any person other than the board or its duly authorized agents to sell, purchase, give away, or possess any distilled spirits excise stamps unless such stamps are attached to packages of distilled spirits except as such sale, purchase, gift or possession is elsewhere permitted in this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, inserted "purchase" after "sell" and "or possess" after "give away" and the last clause beginning with "except"; omitted language referring to specific licensees who were authorized to sell or give away stamps; and omitted provision making violation of the section a misdemeanor.

UNLAWFUL POSSESSION OF STAMPS BY RETAILERS.

SEC. 35a. It shall be unlawful for any on- or off-sale licensee to have in his possession, either on or off his licensed premises, any distilled spirits excise stamps which are unattached to containers of distilled spirits except as elsewhere permitted in this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

PUNISHMENT FOR UNLAWFUL SALE OR POSSESSION OF STAMPS.

SEC. 35b. Any person violating the provisions of section 35 or 35a shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

SEIZURE OF STAMPS.

SEC. 35c. The board may seize any excise stamps sold, purchased, given away or possessed contrary to the provisions of this act and after thirty days from the date of seizure it shall destroy the same. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

COUNTERFEITING OR FRAUDULENT USE OF STAMPS.

SEC. 36. Every person who makes, sells, or uses any false or counterfeit stamp or die for printing or making stamps which is in imitation of or purports to be a lawful stamp, or die of the kind before mentioned in this act, or who procures the same to be done, and every person who shall remove or cause to be removed, from any package of distilled spirits any stamp denoting the tax thereon, with intent to reuse such stamp, or who with intent to defraud the State, knowingly uses, or permits to be used any stamp removed from another package, or receives, buys, sells, gives away, or has in his possession, any stamp so removed, or makes any fraudulent use of any stamp for distilled spirits, shall be guilty of a felony and shall be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned not less than six months nor more than three years in the State prison. *(Original section; Statutes 1935, p. 1123.)*

REFILLING OF DISTILLED SPIRITS PACKAGES UNLAWFUL.

SEC. 36a. Every person, whether licensed or not, who refills or causes to be refilled with distilled spirits any distilled spirits package to which excise stamps are or have been attached shall be guilty of a felony. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

DESTRUCTION OF EMPTIED DISTILLED SPIRITS BOTTLES; UNLAWFUL USE OF EMPTIED BOTTLES.

SEC. 36b. (1) Any on-sale distilled spirits licensee or any person employed by such licensee who empties a bottle containing distilled spirits shall immediately after emptying a bottle destroy the bottle;

(2) Every on-sale distilled spirits licensee shall provide at all service counters where distilled spirits are poured from bottles the necessary facilities for the destruction of bottles so that persons emptying distilled spirits bottles may immediately destroy the same as herein provided;

(3) Any alcoholic beverage licensee, except a manufacturer or rectifier of distilled spirits, who shall be found in possession of an emptied distilled spirits bottle which has not been destroyed, shall be guilty of a misdemeanor and, in addition to any other punishment provided by law, shall be fined five dollars for each such emptied distilled spirits bottle found on his premises;

(4) It shall be unlawful to use emptied distilled spirits bottles for any purpose, and it shall be unlawful to purchase, sell, give away or in any manner deal in such emptied distilled spirits bottles. The possession by any person of such bottles in quantities greater than twenty bottles, shall be considered prima facie evidence of a violation of this paragraph. Any person using or dealing in emptied distilled spirits bottles shall be guilty of a misdemeanor and, in addition to any other punishment provided by law, may be fined five dollars per bottle for each such emptied distilled spirits bottle found in his possession. It shall be the duty of all agents and employees of the State Board of Equalization and of all peace officers to destroy emptied distilled spirits bottles wherever found. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

DISPOSITION OF FUNDS COLLECTED.

SEC. 37. All moneys collected as license fees and under the excise tax provisions of this act shall be deposited in the State treasury to the credit of the alcohol beverage control fund, which fund is hereby created. Moneys in said fund are hereby appropriated as follows:

1. Six hundred thousand dollars for expenditure by the board in carrying out the provisions of this act for collecting the excise taxes levied by this act;

2. Twelve thousand dollars, or so much thereof as may be necessary, for expenditure by the Controller in carrying out the provisions of this act requiring the collection of excise taxes;

3. Sixty thousand dollars to be used by the State Department of Public Health for enforcement work directed toward preventing the manufacture, sale or transportation of adulterated, misbranded or mislabeled alcoholic beverages;

4. One million four hundred thousand dollars to pay the salaries and expenses of auditors, inspectors and clerks employed by the board and to defray the necessary expenses arising by reason of the administration and enforcement of the provisions of this act;

5. Ten thousand dollars for expenditure by the State Department of Finance in auditing the revenues and expenditures resulting from the provisions of this act;

6. Fifty per cent of all moneys collected from fees, to be paid semi-annually to the counties, cities and counties, and cities of this State in the proportion that the amount of the fees collected in the particular county, city and county, or city bears to the total amount so collected throughout the State, and the State Controller shall during the months of April and October of the year, draw his warrants upon said fund in favor of the treasurer of each county, city and county, and city for the amount to which each is entitled hereunder;

7. The expenditures authorized by subdivisions 1, 2, 3, 4, 5 and 9 of this section shall be made exclusively from the remaining fifty per cent of moneys collected from fees and no part thereof from the fifty per cent of fees payable to counties, cities and counties, and cities under the provisions of subdivision 6 of this section;

8. Such amount as is necessary for the allowance of the refunds provided for in this act;

9. In addition to any other appropriation, for expenditure by the board in carrying out the provisions of this act the sum of four hundred thousand dollars, or so much thereof as may be necessary, together with such amounts as may be made available pursuant to section 661 of the Political Code;

10. Any remaining balance to be transferred to the general fund on the order of the Controller.

The moneys to be used by the State Department of Public Health for enforcement work shall be expended as provided in "An act preventing the manufacture, sale or transportation of adulterated, mislabeled or misbranded food, liquor and drugs, and making an appropriation," approved March 11, 1907. The Director of Public Health shall communicate to the State Board of Equalization any findings which indicate that such act has been violated by any holder of a license under this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, changed subdivision 6 to provide for semiannual payment to cities, counties and cities and counties in the months of April and October of each year and added "9" in subdivision 7 and substituted "6" for "5" in the last phrase of subdivision 7; and added subdivision 9.

Note.—The appropriation contained in subdivision 9 of this section was eliminated by the Governor under the provisions of section 34 of Article IV of the State Constitution.

BOARD AUTHORIZED TO MAKE RULES AND REGULATIONS.

SEC. 38. The board shall administer all of the provisions of this act and to that end shall prescribe all necessary rules and regulations to carry out such provisions. For the performance of its duties the board shall have the power conferred by section 353 of the Political Code. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, changed the reference to the Political Code from section 3692 to section 353 of that code; omitted provision relating to the board's power to require reports from licensees or transportation companies now contained in section 38a; omitted provision relating to board's examination of books and records of any licensee and inspecting licensed premises now contained in section 38b; omitted provision relating to administering and certifying of oaths now contained in section 38c; and omitted provision relating to members of the board and its employees having powers of peace officers in the enforcement of the act.

BOARD MAY REQUIRE REPORTS.

SEC. 38a. In addition to any other reports required under this act the board shall have the power by rule and regulation, and otherwise to require additional, other or supplemental reports from licensees, common and private carriers and other persons and to prescribe the form, including verification, of the information to be given on, and the times for filing of such additional, other or supplemental reports. The failure or refusal of any such person to render the reports so required

under this paragraph shall constitute a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 38.

BOARD MAY EXAMINE BOOKS AND RECORDS.

SEC. 38b. The board may make any examination of the books and records of any licensee or other person and may visit and inspect the premises of any licensee it may deem necessary to perform its duties under this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 38.

POWER TO ADMINISTER OATHS.

SEC. 38c. The members of the board and the persons employed by the board for the administration and enforcement of the provisions of this act shall have the authority to administer and certify oaths in the administration and enforcement of this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 38.

BOARD MEMBERS AND EMPLOYEES HAVE POWERS OF PEACE OFFICERS; SIRENS AND RED LIGHTS ON VEHICLES; EXECUTIVE OFFICERS MAY JOIN NATIONAL ASSOCIATION FOR LIQUOR REGULATION.

SEC. 38d. The members of the board and the persons employed by the board for such purposes shall have all the powers of peace officers in the enforcement of the penal provisions of this act, the rules and regulations of the board adopted under the provisions of this act and any other penal provisions of law of this State prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding or mislabeling of alcoholic beverages or intoxicating liquors.

Any motor vehicle as the board shall determine, which is owned by the State and used by the board in enforcing the provisions of this act, may be equipped with a siren and a red light visible from in front of such vehicle, but such siren or red light shall not be used except when such vehicle is operated in the immediate pursuit of an actual or suspected violator of this act.

The board may authorize any of its executive officers to join or subscribe to any national association or service having as its purpose the gathering and supply of information relative to the technique of liquor regulation, control or administration. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 38.

BEER PRICE POSTING.

SEC. 38e. Each manufacturer, importer and wholesaler of beer shall forthwith file and thereafter maintain on file with the board, in

triplicate and in such form as the board may provide a written schedule of selling prices charged by such licensee for beer sold and distributed by such licensee within the State of California for delivery and use therein; provided, however, that such schedule of prices so filed, may be changed or modified from time to time by the licensee filing the same, by filing with the board a new and complete schedule of such prices or an amendment thereto of changed or modified prices as the board may by regulation require. The first schedule of prices filed by a licensee shall be effective immediately upon filing but an amendatory schedule or amendments to a prior filed schedule shall not become effective until ten (10) days after the filing date thereof; provided, that if any licensee has filed a new schedule to meet lower posted and filed competing prices a trade area, and such prices thus posted are not lower than such competing prices sought to be met, then such new schedule or amendments shall go into effect immediately if such competing prices are already effective, or at the same time as such competing prices become effective. Such price schedule so filed shall be subject to public inspection and shall not in any sense be considered confidential and each said licensee shall retain in his licensed premises for public inspection a copy of his effective posted and filed schedule. Upon the filing of an original schedule of prices and after the effective date of any schedule of amendatory prices, all prices therein stated shall be strictly adhered to by the filing licensee and any departure or variance therefrom by a licensee of his prices so filed and posted and in effect shall constitute and be a misdemeanor, providing that the violation of posted prices as to each article covered by a particular sale or transaction shall not constitute a separate and single misdemeanor or violation of this section as to each such article, but each such sale or transaction involving a violation of posted prices under this section shall constitute but a single offense or violation of this section regardless of the number of articles covered by such sale or transaction.

Any director, officer, agent or employee of any licensee who knowingly assists or aids in the violation of this section or any effective posted price or any rule or regulation of the board passed to carry out the provisions of this section shall be guilty of such violation equally with the licensee.

The board may adopt such other rules and regulations as will foster and encourage the orderly wholesale marketing and wholesale distribution of beer; provided, that no such action shall be taken by the board except after public hearing and ten (10) days notice to all licensed manufacturers of beer in California of the time and place of such hearing and of the character of the action intended to be taken by the board.

No manufacturer, importer or wholesaler mentioned in this section shall be prohibited the right of choice of customers, nor shall any such licensee be prohibited from dividing his customers into functional classes and establish different prices for the same article for such different functional classes, such different functional classes being based upon the manner in which such classes sell beer, as wholesaler or retailer.

Any trade association, having as members licensed beer manufacturers representing more than half of the volume of beer produced and

ld in California for three months prior to the date of a filing of any it authorized in this section, may maintain an action to enjoin a ntinuance of any act or acts in violation of this section or any regu- tion adopted pursuant thereto, and if injured thereby for the recov- y of damages. If in such action the court shall find the defendant violating or has violated any of the provisions of this section or any gulation adopted pursuant thereto the court shall enjoin the defend- nt from a continuance or further violation thereof and it shall not be ecessary that actual damages to the plaintiff be alleged or proven in ch action and proof of a violation of this section or any regulation lopted in pursuance thereof shall be presumptive evidence of an ntention to continue to violate such section or any such regulation. ny defendant in any action brought under the provisions of this ction or any person who may be a witness therein under sections 021, 2031 or 2055 of the Code of Civil Procedure of this State and he books and records of any such defendant or witness may be brought nto court and such books and records may be introduced by reference nto evidence; provided, however, that no information so obtained ay be used against the defendant or any such witness as a basis for misdemeanor prosecution under the provisions of this section.

The board shall not suspend or revoke the license of any licensee or a violation of the provisions of this section or a regulation adopted ursuant thereto unless such licensee shall have committed, within a eriod of one year, at least three separate violations of the provisions f this section or of any rule or regulation adopted by the board pur- uant thereto and such violations shall have been proven by all or any f the following methods, to wit: (1) a conviction for misdemeanor or 2) a judgment in a civil suit for injunction as herein provided or 3) by a finding of the board if hearing is held in accordance with ections 40 to 48 inclusive herein, in which event the board may suspend r revoke the license of such licensee. *(Statutes 1937, ch. 758; opera- ive July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

DENIAL OF LICENSES.

SEC. 39. A written report of a member of the board or of an employee of the board engaged in the enforcement of this act disclosing that an applicant for a license or the premises for which a license is applied are not qualified for a license under this act shall constitute grounds for the denial of an application for a license.

Immediately upon the denial of any application for a license the board shall notify the applicant thereof in writing. Within ten days after mailing the notice the applicant may present his written petition for a license to the board.

Upon receipt by the board of a petition for a license in proper form it shall be referred to a representative of the board for hearing.

Protests may be made to the board at any time prior to the issuance of a license against either the original issuance of a license or the renewal of a license.

Protests must be in writing and filed in the main office of the board at Sacramento, and must state one or more grounds which would

authorize the board, to deny or refuse the issuance of the license. The original copy of the protest must be verified unless made by public officers acting in their official capacity.

Upon receipt by the board of a protest in proper form it shall be referred to a representative of the board for hearing.

If a license has been issued to the applicant before receipt of the protest by the board, the protest shall be considered as a complaint against the licensee and a hearing had thereon as if a complaint had been filed. *(Original section; Statutes 1935, p. 1123.)*

COMPLAINTS AGAINST LICENSEES.

SEC. 40. Complaints may be made to the board by any person against any licensee. Complaints must be in writing and must state a violation of section 38e or one or more grounds which would authorize the board to suspend or revoke the license or licenses of the licensee against whom the complaint is made.

A written report of a member of the board or of an employee of the board engaged in the enforcement of this act, or of a public officer disclosing a violation of section 38e or one or more grounds for the suspension or revocation of the license or licenses of any licensee shall be deemed a complaint against the licensee within the meaning of this act, even though not in the form of a complaint.

The original copy of complaints must be verified unless made by public officers acting in their official capacity or by employees of the board engaged in the enforcement of this act.

The following are the grounds which constitute a basis for the suspension or the revocation of licenses:

1. When the continuance of such license would be contrary to public welfare or morals; but proceedings under section 40 upon this ground shall not be deemed a limitation upon the board's authority to proceed under Article XX, section 22 of the Constitution of this State.

2. Except as limited by section 38e hereof, the violation or the causing or the permitting of a violation by a licensee of (a) this act, (b) any rules and regulations of the board adopted under the provisions of this act, (c) any other penal provisions of law of this State prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding or mislabeling of alcoholic beverages or intoxicating liquors.

3. The misrepresentation of a material fact by any applicant in obtaining any license hereunder.

4. The plea, verdict or judgment of guilty to any public offense involving moral turpitude charged against the licensee. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added "a violation of section 38e" and added subdivisions 1 and 4; and added in subdivision 2 the reference to section 38e and the provisions of clause (c).

COMPLAINTS BY LOCAL LEGISLATIVE BODIES.

SEC. 40.5. Complaints against any on-sale or off-sale licensee may be filed with the board by the legislative body of any city or city and

county in which the premises in question are located, or if said premises are in unincorporated territory, then by the board of supervisors of said county, requesting the suspension or revocation of any retail license. Upon the filing thereof, the board must provide for a public hearing thereon within the county in which said premises are located and determine whether or not such license should be revoked or suspended. Whenever the local legislative body shall certify that the public safety, health or welfare require an immediate hearing of such complaint, said public hearing shall be held within five (5) days after the filing of the complaint with the board. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

HEARINGS BEFORE REPRESENTATIVE OF BOARD.

SEC. 41. The board shall cause written notice of the time and place of hearing the protest, complaint or petition for a license to be given to the protesting or complaining party as well as the applicant, licensee or petitioner.

The hearing shall be set for a date not more than fifteen days nor less than five days subsequent to the mailing of the notice and shall be held in the county seat of the county in which the premises of the applicant or licensee are located.

Inclosed with a copy of the notice of the time and place of hearing sent to the applicant or licensee shall be a copy of the protest or complaint as filed with the board.

The failure of an applicant for a license or a licensee to appear before the representative of the board at the time set for the hearing, except for the intervention of an act of God, shall be deemed an admission by him of the facts or acts charged in the protest or complaint and thereupon the representative of the board shall have the power to act as if the facts charged in the protest or complaint were found to be true.

The board or any member thereof or any representative appointed by the board to conduct hearings shall have the power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the State.

Each witness who shall appear, by order of the board or member thereof or a representative appointed by it, shall be entitled to receive, if demanded, for each attendance the same fees and mileage allowed by law to witness in civil cases in the superior court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the board or the representative. When any witness who has not been required to attend at the request of any party is subpoenaed by the board, or a member thereof or a representative of the board, his fees and mileage may be paid from the funds appropriated for the use of the board in the administration of this act in the same manner as other expenses of the board are paid in the administration of this act.

The superior court in and for the county or city and county in which any inquiry, investigation, hearing or proceeding may be held by the board or a representative appointed by it shall have the power to compel the attendance of witnesses, the giving of testimony and the production of papers, including books, accounts and documents as required by any subpoena issued by the board or any member thereof or a representative appointed by the board.

The board or any representative appointed by it, before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the superior court, in and for the county, or city and county, in which the proceeding or hearing is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of said papers, and that the witness had been subpoenaed in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by the subpoena, or has refused to answer questions propounded to him in the course of such proceeding or hearing, and ask an order of said court, compelling the witness to attend or testify or produce said papers before the board or representative. The court, upon the petition of the board or any member thereof or a representative appointed by the board, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he did not attend and testify or produce said papers before the board or representative of the board. A copy of said order shall be personally served upon said witness, and service shall not be made by registered mail as otherwise provided in this act.

If it shall appear to the court that said subpoena was regularly issued by the board or member thereof or a representative of the board and the witness was legally bound to comply therewith, the court shall thereupon enter an order that said witness shall appear before the board or representative at a time and place to be fixed in such order, and testify or produce the required papers, and upon failing to obey such order said witness shall be dealt with as for contempt of court. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, changed the first paragraph by substituting "The board" for "Upon receipt of a representative of the board of a protest, a complaint or a petition for a license, the representative" in the first paragraph.

CONDUCT OF HEARINGS; DEPOSITION OF WITNESSES.

SEC. 42. All hearings and investigations before the board or any representative appointed thereby shall be governed by this act and other applicable provisions of law not inconsistent herewith and in the conduct of said hearings neither the board nor any representative appointed by it shall be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in such manner through oral testimony and printed records as is best calculated to

extend the substantial rights of the parties and carry out jointly the spirit and provisions of this act.

The board, or any member of the board or any representative appointed by it, or any party to the action or proceeding may, in any investigation or hearing before the board or a representative thereof cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the superior court of this State, and to that end may compel the attendance of witnesses and the production of books, documents, papers and accounts; provided that depositions taken outside of the State may be taken before any officer authorized to administer oaths. *(Original section; Statutes 1935, p. 1123.)*

CERTIFICATION OF FINDINGS TO BOARD.

SEC. 43. Within ten days after the hearing the representative of the board shall certify to the board his findings of ultimate fact whether the protest, complaint or petition is true or not, and in the case of hearings on complaints the representative may make recommendations in respect to the suspending or revoking of licenses. The findings and recommendations of the representative shall not be open to public inspection, either to the applicant, licensee, protestant, complainant or any other person. *(Original section; Statutes 1935, p. 1123.)*

NOTICE OF BOARD'S DECISION.

SEC. 44. After the findings of the representative of the board are filed, the board shall make its decision upon the petition for a license, protest or complaint, and shall notify the petitioner, protestant, complainant, and licensee thereof. Within ten days after the mailing of the notice, the petitioner, protestant, complainant or licensee may petition the board for a reconsideration of the cause. Such petitions shall be verified unless filed by a public officer acting in his official capacity. *(Original section; Statutes 1935, p. 1123.)*

REHEARING BY BOARD.

SEC. 45. Within thirty days after receipt by the board of a petition for reconsideration the board may itself rehear the entire matter de novo and if it holds such hearing shall within ten days after the conclusion thereof either affirm, modify or set aside its previous order. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, substituted "may" for "shall"; after "novo" inserted "and if it holds such hearing" and substituted "ten days after the conclusion thereof" for "said thirty."

Hearing de novo.—Section 45 as it read prior to the 1937 amendment made it a mandatory duty of the board itself upon the filing of a petition for reconsideration to hold a hearing and inquire into the whole matter in controversy (*Yee* vs. *The State Board of Equalization* (1936), 16 Cal. App. (2d) 417.)

COURT REVIEW OF BOARD'S ACTION.

SEC. 46. The person affected by any ruling, order or decision of the board in the making of an arbitrary assessment of taxes or an

additional assessment of taxes or on any ruling, order or decision on a petition for a license, a protest, complaint or any other matter, or on suspension or revocation of a license may, after exhausting the remedies such person may have with the board, and within thirty days after final action by the board, file an action in the superior court of California in and for the county of Sacramento. Said action shall be for a review of the ruling, order, decision or other official act of the board. Said court shall review all records on file with the board which pertain to said ruling, order, decision or other official act, and if furnished by the board, a transcript of evidence taken by the board, and said court shall take such additional relevant and competent evidence as said court may require or as may be submitted by the board or the person filing such petition for review and shall then render, according to the weight of evidence adduced before said court, judgment affirming, reversing or modifying the action of the board. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted all the former section and added the present section. This section formerly read as follows: "The action of the board on a petition for a license, a protest, complaint, or a petition for reconsideration shall be subject to review by any court of competent jurisdiction."

PETITION FOR RECONSIDERATION NOT A BAR TO REVIEW BY COURT.

SEC. 47. The filing of a petition for reconsideration with the board shall not be a bar to any application to the courts for relief and shall not prevent a court from reviewing or setting aside the action of the board upon a petition for a license, protest or complaint. *(Original section; Statutes 1935, p. 1123.)*

SERVICE OF NOTICE.

SEC. 48. Notice of any act of the board required by this act to be given may be signed and given by the board, its secretary or an employee of the board and may be made personally or by mail; if by mail service shall be made in the manner prescribed by section 1013 of the Code of Civil Procedure. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, substituted "Notice of any act of the board required by this act to be given may be filed and given by the board, its secretary or an employee of the board and" for "Service of the notices required by this act may be made."

NOTICE OF VIOLATION OF PURE FOOD ACT.

SEC. 48.5. The Chief of the Bureau of Food and Drug Inspection shall immediately notify the State Liquor Administrator of the conviction of any licensee under this act of any violation in connection with alcoholic beverages of an act entitled "An act for preventing the manufacture, sale or transportation of adulterated, mislabeled or misbranded foods and liquors a[nd] regulating the traffic therein, providing penalties, establishing a State laboratory for foods, liquors and drugs

and making an appropriation therefor," approved March 11, 1907, and shall send a copy of such notice to the chief liquor control officer of the district in which the premises of the licensee are situated. The respective officers shall promptly cause an investigation to be made and shall report to the board their recommendations as to suspension or revocation of the license of such licensee. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

NOTICE TO MANUFACTURERS, RECTIFIERS AND WHOLESALERS OF REVOKED OR SUSPENDED LICENSES.

SEC. 48.6. It shall be the duty of the board to notify all licensed manufacturers, manufacturers' agents, rectifiers and wholesalers of the names and license numbers of all alcoholic beverage licensees whose licenses have been suspended or revoked by the board. Such notification may consist in the mailing of a list of such suspension and revocations or it may be by the publication in two or more alcoholic beverage trade journals having a state-wide circulation among such licensees. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

IMPORTS.

SEC. 49. Alcoholic beverages shall be brought into this State from without this State for delivery or use within the State only when such alcoholic beverages are consigned to a licensed importer and only when consigned to the premises of such licensed importer or to the premises of a public warehouse licensed under this act. Alcoholic beverages which are consigned to a destination within this State shall be presumed to be for delivery or use within this State. Alcoholic beverages imported into this State contrary to the provisions hereof shall be seized by the board. Every person violating the provisions of this section shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted all but the last sentence. The section formerly provided for the forfeiture of alcoholic beverages consigned to a person who was not a licensed importer. Other omitted portions of the section with amendments thereto are contained in the first two sentences of section 49.2. See note following section 49.2.

RESTRICTIONS ON DELIVERIES BY COMMON CARRIERS.

SEC. 49.2. Common or private carriers transporting alcoholic beverages into this State from without the State for delivery or use within this State must obtain the receipt of the licensed importer, distilled spirits manufacturer or distilled spirits manufacturer's agent for the alcoholic beverages so transported and delivered and, if the consignee refuses to give such receipt and show his license to the carrier, the carrier shall be relieved of all responsibility for delivering said alcoholic beverages. Where the consignee is not a licensed importer, distilled spirits manufacturer or distilled spirits manufacturer's agent

or where the consignee refuses to give his receipt and show his license the carrier shall immediately notify the board at Sacramento giving full details as to the character of shipment, point of origin, destination and address of the consignor and consignee, and within ten days such alcoholic beverages shall be delivered to the board and shall be forfeited to the State of California. If any alcoholic beverages seized under the preceding section or forfeited under this section are sold by or under the direction of the board the common carrier's unpaid freight and storage charges accruing on the shipments of such alcoholic beverages shall be satisfied out of the proceeds of any sale made by the State after deducting the cost of such sale and any excise taxes accruing thereon. Every person violating the prvoisions of this section shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. See note following section 49. The first two sentences of this section were formerly contained in section 49 except for the following amendments to those sentences: The references to distilled spirits manufacturer or distilled spirits manufacturer's agent were added; "from without the State for delivery or use within this State" was added; and "or where the consignee refuses to give his receipt and show his license" was added.

POSTAL SHIPMENTS.

SEC. 49.4. Postal authorities may refuse delivery of any shipment of alcoholic beverages originating outside this State. Postal authorities may turn alcoholic beverages over to the board. The alcoholic beverage when received shall be forfeited to the State. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. This section was formerly section 50 which section provided also for a sale at public auction and for making the violation of the section a misdemeanor. The word "alcoholic" was inserted in the second sentence.

UNLAWFUL POSSESSION ON LICENSED PREMISES; SEIZURE.

SEC. 50. It shall be unlawful of any person or licensee to have upon any premises for which a license has been issued any alcoholic beverages other than the alcoholic beverage which the licensee is authorized to sell at such premises under his license. It shall be presumed that all alcoholic beverages found or located upon premises for which licenses have been issued belong to the person or persons to whom such licenses were issued. Every person violating the provisions of this section shall be guilty of a misdemeanor. The board may seize any alcoholic beverages found in violation of this section. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. See note following section 49.4. Stats. 1937, ch. 758, omitted all the former provisions of this section. The section contains substantially the same provisions of the first four sentences of the former section 51 except that the provision relating to summary destruction or sale at public auction of alcoholic beverages seized under the section was omitted.

POWER OF SEIZURE.

SEC. 51. The board shall also have the power to seize the following alcoholic beverages:

1. Alcoholic beverages manufactured in this State by any person other than a licensed manufacturer, regardless of where found;

2. Beer and wine upon the sale of which the excise tax imposed by this act has not been paid, regardless of where found;

3. Distilled spirits except (a) distilled spirits located upon premises for which licenses authorizing the sale of such distilled spirits have been issued; (b) distilled spirits consigned to and in the course of transportation to a licensee holding licenses authorizing the sale of such distilled spirits or for delivery without this State; (c) distilled spirits the containers of which bear the stamps herein required to be attached thereto; (d) alcohol or distilled spirits in the possession of a person who has lawfully purchased the same for use in the trades, professions or industries and not for beverage use. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. See note following section 50. Stats. 1937, ch. 758, omitted the provision for summary destruction or sale at public auction and the exemption from seizure of distilled spirits in the United States Government bonded warehouses, and added to clause (b) "or for delivery without this State" and added clause (d).

SEIZURE OF STILLS.

SEC. 51a. The board or its employees shall also have the power to seize any unlicensed still, whether in actual operation or not, and whether assembled for operation or dismantled, and also any parts of such stills, and also any materials or supplies capable of being used for the manufacture of alcoholic beverages which are found on or about the premises where any such unlicensed still or parts thereof are found. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

FORFEITURE.

SEC. 51b. When alcoholic beverages or any other property are seized under the provisions of this act such alcoholic beverages or other property shall be forfeited to the State and all such forfeitures are hereby declared to be statutory forfeitures. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

DESTRUCTION FOLLOWING SEIZURE.

SEC. 51c. When alcoholic beverages or other property are seized for forfeiture or forfeited under this act they may be disposed of by the board, its officers or employees by summary destruction when such alcoholic beverages are unfit for human consumption or when such alcoholic beverages or other property is incapable of lawful use or incapable of lawful sale by the persons from whom seized. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

DISPOSITION OF FORFEITED ALCOHOLIC BEVERAGES OR PROPERTY.

SEC. 51d. When alcoholic beverages or other property are seized or forfeited under this act and such alcoholic beverages or other property are not disposed of under section 51c then such alcoholic beverages or other property shall be subjected to a forfeiture proceeding in the superior court as in this act provided and upon a judgment in favor of the forfeiture the alcoholic beverages or other property shall be ordered turned over to the State Department of Finance for disposition as follows: (1) delivery to the State Board of Equalization for use in the needs of said board as may be requested by said board, (2) delivery to any other State department, board, commission, officer, hospital or institution, (3) sale at public auction, and when alcoholic beverages are sold at public auction they shall be sold only to a licensee or licensees authorized to sell such alcoholic beverages. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

SEIZURE RECORDS.

SEC. 51e. When alcoholic beverages or other property are seized under this act a record of the seizure and disposition shall be kept by the board. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

UNLAWFUL DISPOSITION OF SEIZURES.

SEC. 51f. Any member of the board, or officer, employee or agent of the board who disposes of any alcoholic beverages or other property, seized under any section of this act, in any manner other than as directed by order of the court or the provisions of this act shall be liable to the State in a civil action and shall be guilty of a felony. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

UNLAWFUL USE OF VEHICLES; FORFEITURE OF VEHICLES.

SEC. 51g. It shall be unlawful for any person to use any automobile or other vehicle to conceal, convey, carry, or transport any alcoholic beverages which are subject to seizure under the provisions of this act; except that the provision of this section shall not apply to any person who is the holder of an industrial alcohol dealer's license or who has purchased distilled spirits from the holder of an industrial alcohol dealer's license and who uses an automobile or other vehicle to transport distilled spirits for use in the trades, professions or industries. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Any automobile or other vehicle so used to conceal, convey, carry or transport alcoholic beverages in violation of this section shall be forfeited to the State of California. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

FORFEITURE PROCEDURE.

SEC. 52. (a) Any peace officer of this State upon seizing any alcoholic beverages or other property, not subject to summary destruction as provided in section 51c, shall hold the same as evidence until a forfeiture has been declared or a release ordered as provided in this section. All forfeitures under this act are hereby declared to be statutory forfeitures.

(b) Notice of the seizure and of the intended forfeiture proceeding shall be filed with the county clerk and shall be served on all persons, firms or corporations having any right, title or interest in the alcoholic beverages or other property seized; and when the owner or owners are unknown or can not be found then notice of the seizure and intended forfeiture proceedings shall be made upon such owners by one publication in a newspaper of general circulation in the county where such seizure was made.

(c) Within twenty days after service of the notice of seizure and intended forfeiture proceedings, or within twenty days after the date of publication, the owner or owners of the alcoholic beverages or other property so seized may file a verified answer to the fact of the alleged unlawful use of the alcoholic beverages or other property; provided, however, that the claimant of any right, title or interest in said alcoholic beverages or other property so seized may make a verified answer to establish his claim as provided in subdivision (f) of this section. No extensions of time shall be granted for the purpose of making the verified answer above required.

(d) If at the end of twenty days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of unlawful use and shall, upon proof thereof, order the alcoholic beverages or other property forfeited to the State of California.

(e) If a verified answer has been filed, then the forfeiture proceeding may be set for hearing on a day within thirty days therefrom, and notice of this proceeding shall be given to the owner or owners filing verified answers.

(f) At the time set for the hearing any of the owners who have verified answers on file may show by competent evidence that the alcoholic beverages or other property were not in fact used contrary to the provisions of this act. The claimant of any right, title or interest in said alcoholic beverages or other property under a lien, mortgage or conditional sales contract which is officially of record may prove that such lien, mortgage or conditional sales contract is bona fide and was created after a reasonable investigation of the moral responsibility, character and reputation of the lienor, mortgagor or vendee and without any knowledge that such alcoholic beverages or other property was being, or was to be, used contrary to the provisions of this act.

(g) In the event of such proof, the court shall order said alcoholic beverages or other property released to such lienholder, mortgagee or vendor if the amount due to such person shall be equal to, or in excess of, the value of the alcoholic beverages or other property. If the amount due to such person shall be less than the value of said alcoholic beverages or other property then such alcoholic beverages or other property shall be sold at public auction by the board and the remainder of the proceeds of such sale, after payment of the balance due on the purchase price, mortgage, or lien, shall be deposited in the State treasury.

Should the fact be determined that the alcoholic beverages or other property were not used contrary to the provisions of this act, the court shall order the alcoholic beverages or other property released to the owner or owners thereof.

(h) In any case the State Department of Finance shall have the right, within thirty days after judgment, to pay the balance due to such bona fide or innocent purchaser, lienholder, mortgagee or vendor and to purchase the alcoholic beverages or other property for the State.

(i) Nothing contained herein shall apply to common carriers or to an employee acting within the scope of his employment under this act. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted the former provisions of the section and added the present provisions of the section. Section 53 contains the former provisions of this section.

TAX EVASION UNLAWFUL.

SEC. 52½. Any person who wilfully evades or attempts in any manner to evade or defeat the payment of the excise tax imposed by this act is guilty of a felony. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

RESTRICTIONS ON SALES IN PUBLIC BARROOMS.

SEC. 53. Every person who sells, serves or otherwise disposes of any alcoholic beverage, except beer which may be so sold, served or disposed of, over or at any public bar or in any public barroom, for consumption on the premises, shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted all the former provisions of this section and added the provisions of the former section 52. The section formerly made it a misdemeanor for any person to fail to file reports required to be filed by the act or to make a false statement or conceal any material fact in any application, record, report, affidavit or claim provided for in the act except where such act was declared to be a felony by any other law of this State.

BEER LABELS AND CONTAINERS.

SEC. 53.5. All beer sold in this State must have a label affixed to the package or container thereof, upon which shall appear the true and correct name and address of the manufacturer of the beer, and also

the true and correct name of the bottler of such beer if other than the manufacturer. No manufacturer, importer or wholesaler of beer shall use a container or carton as a package or container of a beer other than such beer as is manufactured by the manufacturer whose name or brand of beer appears upon any such container or carton, and no such licensee shall use as a package or container of a beer a container or carton which bears the name of a manufacturer of beer or the brand of any beer other than those of the manufacturer of the beer contained in such container or carton. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

RESTRICTION ON SIZE OF WINE AND BEER CONTAINERS; BRAND NAMES OF BEER.

SEC. 53.6. On and after December 31, 1937, wine shall not be packaged or bottled in any flask containers of less than one-half gallon which are of the same or similar type used for the packaging or bottling of distilled spirits. Every manufacturer or bottler of beer in California or elsewhere whose beer is sold within the State of California shall file with the board the brand name or names under which such manufacturer or bottler sells or labels his draft beer sold in California, and each such manufacturer or bottler shall be and is allowed two brand names which such manufacturer or bottler shall designate as his main or principal brands of draft beer, and any other brand name or names under which such manufacturer or bottler sells or labels or packages his draft beer shall be known as secondary labels. Whenever a draft beer is given, sold or dispensed by an "on-sale" licensee under any such secondary brand name or label the tap sign or draft beer signs required by section 55 of this act to be displayed shall also contain the name and address of the manufacturer or bottler of the draft beer so given, sold or dispensed by such "on-sale" licensee, which name and address must be displayed in the same manner and with the same effect and purpose as the brand name. No retailer shall dispense any draft beer upon which the proper tap sign or draft beer sign is not displayed or the manufacturer or bottler of which has not complied with the terms of this section. No draft beer shall be given, sold or dispensed under a name or brand other than a name or brand filed with the board pursuant to this section and under which such draft beer is sold, labeled or packaged by a manufacturer or bottler. No beer intended for sale in the State of California, except for export, shall be contained in bottles, jugs or cans having a capacity of more than 64 ounces, nor shall beer in bottles, jugs or cans of a capacity in excess of 64 ounces be sold to or purchased by an on-sale or off-sale licensee in the State of California, provided that nothing in this paragraph shall be construed to prohibit the possession or sale by a qualified licensee of draft or unpasteurized beer from or in metal or wood kegs of a capacity of three and one-half (3½) gallons or more. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

RESTRICTIONS ON OWNING INTEREST IN RETAIL PREMISES.

SEC. 54. No manufacturer, manufacturer's agent, rectifier, distiller, bottler, importer or wholesaler or any officer, director or agent of any such person shall

(a) Hold the ownership, directly or indirectly, of any interest in any "on-sale" license; except that no provision of this section 54 shall be held to apply to a manufacturer of beer with respect to one location only and the on-sale licenses, fixtures and appurtenances necessary to the conduct of such location and the sale of alcoholic beverages thereon when such location is in and upon and to be operated for the duration of the Golden Gate International Exposition to be held in the San Francisco Bay region in 1939, and the manufacturer of beer has in writing notified the board of such single location as to which such manufacturer elects the provisions of this section shall not apply.

(b) Furnish, give or lend any money or other thing of value, directly or indirectly, to, nor guarantee the repayment of any loan or the fulfillment of any financial obligation of any person engaged in operating, owning or maintaining any "on-sale" premises where alcoholic beverages are sold for consumption on such premises;

(c) Furnish, give, rent, lend or sell, directly or indirectly, any equipment, fixtures or supplies, other than alcoholic beverage directly or indirectly to any person engaged in operating, owning or maintaining any "on-sale" premises where alcoholic beverages are sold for consumption on such premises, provided that this subdivision shall apply only to manufacturers, bottlers, importers or wholesalers of products of the brewing industry;

(d) Furnish, give, lend or rent directly or indirectly to any person any decorations, paintings or signs other than signs for interior use of not to exceed in area six hundred thirty square inches for use in or about or in connection with any premises where alcoholic beverages are sold for consumption on such premises, or pay money or any thing of value for the privilege of placing or painting a sign or advertisement, or window display on or in any premises selling alcoholic beverages at retail;

(e) Own any interest, directly or indirectly, in the business, furniture, fixtures, signs, except signs for interior use mentioned in subdivision (d) herein, refrigeration equipment or lease in or of any premises operated or maintained under any "on-sale" license for the sale of alcoholic beverages for consumption on the premises where sold; or own any interest directly or indirectly in realty hereafter acquired upon which such "on-sale" premises are maintained unless the holding of such interest is permitted in accordance with regulations of the board;

(f) Hold the ownership, directly or indirectly, of any off-sale distilled spirits license for any premises other than such licensee's licensed wholesale premises, nor own or control any interest directly or indirectly by stock ownership, interlocking directors, trusteeship or mortgage of the premises or fixtures covered by an off-sale distilled spirits license other than the premises of such manufacturer, rectifier, distiller, bottler, importer, or wholesaler; except that any stockholder, member, officer or director of a corporation or association, which cor-

poration or association held a wholesaler's distilled spirits license which was in force on May 1, 1937, or any renewal thereof under this act, may hold or own off-sale distilled spirits licenses, or interests therein, for premises other than the premises for which such wholesaler's distilled spirits license was issued. For the purpose of this subdivision the issuance of a new wholesaler's license upon the expiration of an existing wholesaler's license shall be deemed a renewal thereof.

The provisions of this subdivision shall not apply to any off-sale distilled spirits license held or to be held by any wholesaler when such off-sale distilled spirits license is necessary to enable said wholesaler to operate or continue to operate any concession or leased retail stand in any hotel, which concession or stand is required to be operated by such wholesaler pursuant to any lease or contract entered into prior to the effective date of this subdivision and such retail off-sale distilled spirits licenses may be issued to any such wholesaler for such premises and purposes.

The provisions of this subdivision shall not apply for a period of one year after the effective date of this section to any ownership or control, stock ownership, mortgage or direct or indirect interest in any off-sale distilled spirits license issued in the name of another person or the premises covered by said license by any distilled spirits manufacturer, rectifier, or wholesaler, when such ownership interest, control, stock ownership or mortgage existed prior to May 1, 1937, and also provided that such ownership, control or interest shall be disclosed to the board, in accordance with regulations adopted in connection therewith, within a period of sixty days after the effective date of this section and provided further that nothing in this subdivision shall prohibit any holder of a distilled spirits manufacturer's, manufacturer's agent's, rectifier's or wholesaler's license or any officer, employee or representative of such manufacturer, rectifier or wholesaler from acting as a trustee for any off-sale distilled spirits licensee in any bankruptcy or other proceedings for the benefit of the creditors of such off-sale distilled spirits licensee.

(g) Directly or indirectly, deliver the possession of any alcoholic beverages to any "on-" or "off-sale" licensee under an agreement of consignment whereby title to such alcoholic beverages is retained by the seller or whereby such licensee receiving such alcoholic beverages has the right at any time prior to sale to relinquish possession to or return them to the original seller;

(h) Directly or indirectly, give any licensee or any person any alcoholic beverages as free goods as a part of any sale or transaction involving alcoholic beverages.

(i) Give secret rebates or make any secret concessions to any licensee or the employees or agents of said license and no licensee shall request or knowingly accept from another licensee secret rebates or secret concessions; or give or furnish, directly or indirectly, to any employee of any holder of a retail on-sale or off-sale license only anything of value for the purpose or with the intent to solicit, acquire or obtain the help or assistance of any such employee to encourage or promote either the purchase or the sale of the alcoholic beverage sold or manufactured by the licensee giving or furnishing any such thing of value, and any such employee who shall accept or acquire any such

thing of value contrary to the provisions of this subdivision shall be guilty of a misdemeanor.

(j) Wilfully or knowingly discriminate, in the same trading area, either directly or indirectly in the price of any brand of distilled spirits sold to different retail licensees purchasing under like terms and conditions.

(k) Pay, credit, or compensate a retailer or retailers for advertising, display or distribution service in connection with the advertising and sale of distilled spirits.

(l) Directly or indirectly, hold the ownership or any interest by stock ownership or otherwise, in any firm, corporation, partnership or business, furnishing, supplying or dealing in any office, store or restaurant furnishings or equipment, other than signs for interior use or supplies authorized to be given under this act to any person engaged in operating, owning or maintaining any on-sale premises, provided that this subdivision shall apply only to manufacturers, bottlers, importers and wholesalers of products of the brewing industry.

Any person violating any provision of this section shall be guilty of a misdemeanor and any holder of any retail "on-sale" or retail "off-sale" license who shall solicit the violation of the provisions of this section or accept or permit to be accepted on his behalf and with his consent any of the prohibited matters, articles or acts herein designated shall be guilty of a misdemeanor; provided, however, that the provisions of this section shall not apply to any equipment, fixtures or supplies furnished, given, lent or sold prior to the passage of this act so long as such equipment, fixtures or supplies remain in the premises in which installed prior to such time, nor shall the provisions of this act apply to carbonic acid gas or tapping accessories furnished to any one "on-sale" licensee to a limit of not exceeding a value of $5 per tap in any one calendar year. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added paragraphs (f), (g), (h), (i), (j), (k), (l), "manufacturer's agent," the portion of paragraph (a) referring to the Golden Gate International Exposition in 1939, and "furnished to any one 'on-sale' licensee to a limit of" in the last paragraph.

RESTRICTIONS ON OWNING INTEREST IN MANUFACTURER'S, RECTIFIER'S, IMPORTER'S OR WHOLESALER'S LICENSE.

SEC. 54.5. No on-sale licensee or any officer, director, employee or agent of such licensee shall hold any ownership or interest, directly or indirectly, in any manufacturer's, rectifier's, importer's, or wholesaler's license issued under this act or the business conducted under such license or the property used in such business. *(Statutes 1937, ch. 758; operative July 1, 1937.)*.

History.—Added by Stats. 1937, ch. 758.

RESTRICTIONS ON USE OF SIGNS; SPIGOT MARKERS; ALCOHOLIC CONTENT OF BEER.

SEC. 55. No sign or signs, which in whole or in part advertise any alcoholic beverage, and exceed in area seven hundred twenty square inches and no sign using the words "bar," "barroom," "saloon," "cocktail bar" or "lounge," or words of like or similar import, shall be maintained, erected, used or placed upon or adjacent to the outside of any building and in connection with any premises therein licensed to sell alcoholic beverages at retail for consumption on such premises.

Signs or other advertising matter used in connection with the licensed premises of any retailer of alcoholic beverages shall not be of any obnoxious, gaudy, blatant or offensive nature and shall in no manner contrary to the rules or regulations of said board obstruct the view of the interior of the premises from the street.

Each and every holder of an "on-sale" retail license who shall give, sell or otherwise dispense any draught beer, shall, upon the faucet, spigot or outlet where from such beer is drawn, attach and keep posted a clear and legible notice, placard or marker which shall in the English language indicate and declare the name or brand adopted by the manufacturer of such draught beer so given, sold or dispensed by such licensee, and which notice, placard or marker shall be so situated as to be clearly legible for a distance of at least ten (10) feet from such spigot, faucet or outlet to a person with normal vision, and such notice, sign or placard shall at all times be so situated as to be so clearly legible from the place where such "on-sale" licensee serves any customer or consumer of such beer, and provided further that if such faucet, spigot or other drawing device is in a location not within the room of the place of service and consumption of such beer, then, and in that event there shall also be kept posted a similar notice, placard or marker in the place of service and consumption of such beer which shall truthfully state and indicate only the kinds and brands of draught beer actually on sale in the premises of the "on-sale" licensee.

Any person who shall violate any of the provisions of this section, or who shall substitute another or different brand of draught beer from that indicated by any of the notices, placards or markers hereinabove provided for; or who shall substitute one brand of beer for another, or misrepresent the brand or kind of beer served to a consumer, shall be guilty of a misdemeanor for such violation or noncompliance. Any person who sells or otherwise disposes of, except for export, any draught beer containing more than three and two-tenths per cent of alcohol by weight and any person who sells or otherwise disposes of, except for export, any bottled beer containing more than four per cent of alcohol by weight, shall be guilty of a misdemeanor; provided, that this limitation shall not apply to the sale of ale, porter, brown and stout in bottles bearing labels properly describing the contents under any licenses, other than on sale beer licenses, issued under this act or the State Liquor Control Act. *(Original section; Statutes 1935, p. 1123.)*

RESTRICTIONS ON ADVERTISING.

SEC. 55.2. The use in any advertisement of distilled spirits of any subject matter, language or slogan addressed to and intended to encourage minors or immature persons to drink any such distilled spirits is hereby prohibited. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

FAIR TRADE CONTRACTS.

SEC. 55.5. (a) No contract relating to the sale or resale of any alcoholic beverage which bears, or the label or content of which bears, the trade-mark, brand or name of the producer or owner of such alcoholic beverage and which is in fair and open competition with alcoholic beverages of the same general class produced by others shall be deemed in violation of any law of this State by reason of any of the following provisions which may be contained in such contract:

(1) That the buyer will not resell such alcoholic beverage except at the price stipulated by the vendor;

(2) That the producer or vendee of the alcoholic beverage require, upon the sale thereof to another, that such purchaser agree that he will not, in turn, resell except at the price stipulated by such producer or vendee.

(b) Such provisions in any contract shall be deemed to contain or imply conditions that such alcoholic beverage may be resold without reference to such agreement in the following cases:

(1) In closing out the owner's stock for the purpose of discontinuing delivery of any such alcoholic beverage; provided, however, that at the place of any such sale and upon the goods sold and in any advertisement in connection therewith public notice is given of the character of such sale as a "close out sale"; provided further, that such alcoholic beverage is first offered to the manufacturer or vendor thereof at the original invoice price at least ten days before it is offered for sale to the public;

(2) When the alcoholic beverage or container is damaged or deteriorated in quality, and notice is given to the public thereof at the place of any such sale and upon the goods sold and in any advertisement in connection therewith;

(3) By any officer acting under the orders of any court.

(c) Wilfully and knowingly advertising, offering for sale or selling any alcoholic beverage at less than the price stipulated in any contract entered into pursuant to the provisions of this section, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby.

(d) This section shall not apply to any contract or agreement between producers or between wholesalers or between retailers as to sale or resale prices. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

GIFTS OR PREMIUMS UNLAWFUL.

SEC. 55.7. No licensee shall, directly or indirectly, give any premium, gift, or free goods in connection with the sale of any alcoholic beverage. Any person violating the provisions of this section shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

REGULATION OF CREDIT TERMS.

SEC. 55.8. The board may adopt rules and regulations specifying the maximum credit terms which shall be extended to any on-sale or off-sale licensee after notices have been mailed to all manufacturers, rectifiers and wholesalers at least 30 days prior to the adoption of such rules and regulations. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

EMPLOYMENT OF MINORS UNLAWFUL.

SEC. 56. Every person who employs or uses the services of minors in or on that portion of any premises which are used for the sale and service of alcoholic beverages for consumption on the premises shall be guilty of a misdemeanor. *(Original section; Statutes 1935, p. 1123.)*

EMPLOYMENT OF FEMALE BARTENDERS UNLAWFUL.

SEC. 56.4. Every person who uses the services of a female in mixing alcoholic beverages containing distilled spirits, on any premises used for the sale of alcoholic beverages for consumption on the premises, or any female who renders such services on such premises, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than three months or by both such fine and imprisonment.

The provisions of this section shall not apply to the mixing of alcoholic beverages containing distilled spirits by any on-sale licensee nor to the mixing of such beverages by the wife of any licensee on the premises for which her husband holds an on-sale license. *(Statutes 1937, ch. 681; in effect August 27, 1937.)*

History.—Added by Stats. 1937, Ch. 681.

EMPLOYMENT OF HOSTESSES AND ENTERTAINERS ON PERCENTAGE BASIS UNLAWFUL.

SEC. 57. It shall be unlawful for any person to pay or agree to pay any hostess, waitress, entertainer or other person a percentage of the receipts from sales of alcoholic beverages solicited or made by such hostess, waitress, entertainer or other person a salary or remuneration the amount of which is in any way dependent upon the amount or number of sales of alcoholic beverages solicited or made by such hostess, waitress, entertainer or other person. Provided, that this section shall

not prohibit the holders of manufacturer's, rectifier's or wholesaler's licenses from employing and paying salesmen engaged in selling or soliciting sales for alcoholic beverages on a commission basis.

Every person who violates the provisions of this section shall be guilty of a misdemeanor. *(Original section; Statutes 1935, p. 1123.)*

DISORDERLY HOUSES UNLAWFUL.

SEC. 58. Every licensee or agent or employee of any licensee who keeps or permits to be used or suffers to be used, in conjunction with a licensed premises, any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which are injurious to the public morals, health, convenience or safety shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, substituted "licensee or agent or employee of any licensee" for "person" and added "in conjunction with a licensed premises."

SALES ON ELECTION DAY UNLAWFUL.

SEC. 59. Every on- or off-sale licensee who sells, gives away or furnishes any alcoholic beverage in any election district or precinct in any county in the State where an election is in progress, during the hours when by law the polls are required to be kept open for voting shall be guilty of a misdemeanor. *(Original section; Statutes 1935, p. 1123.)*

RETAIL SALES UNLAWFUL DURING CERTAIN HOURS.

SEC. 59.5. Any on- or off-sale licensee who sells, gives, or delivers to any person any alcoholic beverage between the hours of two o'clock a.m. and six o'clock a.m. of the same day, is guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

RESTRICTIONS AS TO TIME OF MAKING WHOLESALE DELIVERIES.

SEC. 60. Except as otherwise provided in this section, no person licensed as a manufacturer, distilled spirits manufacturer's agent, rectifier or wholesaler of any alcoholic beverage shall deliver or cause to be delivered any alcoholic beverage to or for any person holding an on-sale or off-sale license except between the hours of six a.m. and eight p.m. of any day other than Sunday. No delivery of any distilled spirits shall be made nor caused to be made by any licensee in any precinct where an election is in progress during the hours when by law the polls are required by law to be kept open for voting. Beer and wine may be delivered at the platform of the manufacturing or distrubuting plant at any time. Nothing herein contained shall be construed to prohibit the transportation or the carriage and delivery in transit at any time of beer or wine between the premises of a manu-

facturer, wholesaler, distiller, importer or any of them. Every person violating the provisions of this section shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added "distilled spirits manufacturer's agent" and omitted "import"; substituted "alcoholic beverage" for "beer" in the first sentence and "Beer and wine" for "Alcoholic beverages" in the third sentence; and added the provision relating to transportation of beer or wine between the premises of a manufacturer, wholesaler, distiller or importer.

SALES TO MINORS UNLAWFUL.

SEC. 61. (a) Every person who sells, furnishes, gives, or causes to be sold, furnished or given away any alcoholic beverage to any person under the age of twenty-one years shall be guilty of a misdemeanor.

(b) Any minor who purchases any alcoholic beverage or any minor who consumes any alcoholic beverage in any on-sale premises is guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats 1937, ch 758, omitted a provision excepting parents or guardians and added paragraph (b).

SALES TO HABITUAL DRUNKARD UNLAWFUL.

SEC. 62. Every person who sells, furnishes, gives or causes to be sold, furnished or given away, any alcoholic beverage to any habitual or common drunkard, or to any obviously intoxicated person shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, added "or to any obviously intoxicated person."

RESTRICTIONS ON BRINGING ALCOHOLIC BEVERAGE INTO JAILS, ETC.

SEC. 63. Every person, not authorized by law, who brings into any State prison, town or county jail, or city and county jail, or reformatory in this State or within the grounds belonging to any such institution any alcoholic beverage of any kind whatsoever shall be guilty of a felony. *(Original section; Statutes 1935, p. 1123.)*

SALES ON PUBLIC SCHOOL GROUNDS UNLAWFUL.

SEC. 64. Every person who sells, gives or delivers to any other person any alcoholic beverage at any public schoolhouse or upon any portion of the grounds thereof shall be guilty of a misdemeanor. Any person convicted of a violation of this section shall, in addition to the penalty imposed for the misdemeanor, be barred from having or receiving any privilege of the use of public school property which is accorded by Chapter II of Part III of Division VI of the School Code of this State. *(Original section; Statutes 1935, p. 1123.)*

PUNISHMENT FOR MISDEMEANORS.

SEC. 65. Every person convicted for a violation of any of the provisions of this act for which another penalty or punishment is not specifically provided for herein, shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted "of a misdemeanor" following "convicted" and added "guilty of a misdemeanor and shall be", and omitted the second paragraph of the section as it formerly read. See note following section 65b.

PUNISHMENT FOR FELONY.

SEC. 65a. Every person convicted of a felony for a violation of any of the provisions of this act for which another punishment is not specifically provided for herein, shall be punished by a fine of not more than five thousand dollars or by imprisonment in the State penitentiary for not less than one year nor more than five years or by both such fine and imprisonment. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758. This section was formerly section 66.

DISPOSITION OF FINES.

SEC. 65b. All fines and forfeitures of bail imposed for a violation of this act and collected in any court, except police courts, city justices' courts, city courts, and recorders' courts of cities or towns, must be paid to the county treasurer of the county in which the court is held; provided that all fines and forfeitures of bail collected in any police court, city justices' court, city court, or recorders' court, of any city or town that is maintained and the salaries of the officers thereof paid by the city shall be paid to the city treasurer of the city in which such court is located, excepting, however, all forfeitures of bail collected by the judge of any of said courts when sitting as a committing magistrate. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History—Added by Stats. 1937, ch. 758. This section formerly comprised the second paragraph of section 65. Stats. 1937, ch. 758, added the words "of bail."

SHIPMENTS IN TRANSIT THROUGH STATE.

SEC. 66. Where alcoholic beverages are brought into this State from without this State for delivery or use without this State such alcoholic beverages shall be exempt from the provisions of this act only while in continuous transit through this State; except that the board, to insure such continuous transit, may require affidavits of any person on forms prescribed by the board and may require any such shipments to be checked in and checked out at the boundaries of the State. Any person refusing to make such report or refusing to

check in or check out such alcoholic beverages shall be guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Enacted Stats. 1935, p. 1123. Stats. 1937, ch. 758, omitted all the provisions of the former section which now comprise section 65a and substituted the provision of the section as it now reads.

DUTY OF LOCAL AUTHORITIES TO ENFORCE ACT.

SEC. 66.5. It is hereby made the duty of every peace officer and every district attorney in this State to enforce the provisions of this act, and to inform against and diligently prosecute persons whom they have reasonable cause to believe offenders against the provisions hereof. Every such officer refusing or neglecting to do so is guilty of a misdemeanor. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

ACT NOT APPLICABLE TO DENATURED ALCOHOL; TAX-FREE PRODUCTS.

SEC. 67. It is hereby declared that this act shall not apply to the manufacture, sale or use of completely denatured ethyl alcohol or special denatured ethyl alcohol, as these substances are defined in the various statutes and regulations of the United States government relating thereto.

Nothing in this act shall be deemed to prevent or restrict the use of tax-free ethyl alcohol under regulation of the Treasury Department of the United States government by any governmental agency, State or Federal, or any scientific university or college of learning or any laboratory for use exclusively in scientific research or to any hospital or sanitarium.

Nothing in this act shall be deemed to prevent or restrict the use of tax-free alcohol or of industrial alcohol or other distilled spirits or wine under regulation of the United States government in the manufacture of medicinal pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists; of toilet products, of flavoring extracts, sirups, of food products, of scientific, chemical, or industrial products; provided such products are unfit for beverage use. *(Original section; Statutes 1935, p. 1123.)*

Industrial alcohol not taxable.—Ethyl alcohol to be used in the manufacture of nonbeverage products, is not subject to tax under the provisions of the act. (*Commercial Solvents Corporation* vs. *Riley et al* (1936), 92 C. D. 639.)

INDUSTRIAL ALCOHOL DEALER'S REPORTS; DIVERSION TO BEVERAGE USE UNLAWFUL.

SEC. 67.1. No tax under this act shall be imposed upon the sale of alcohol or distilled spirits by distilled spirits manufacturers, rectifiers, or industrial alcohol dealers for use in the trades, professions, or industries, but not for beverage use. Complete information concerning sales of distilled spirits for use in the trades, professions or industries by persons holding industrial alcohol dealers' licenses, distilled spirits manufacturers' licenses and brandy manufacturers'

licenses shall be reported to the board each month by such licensees on forms prescribed by the board.

Any person who shall divert or who shall conspire with others to divert for beverage use any alcohol or other distilled spirits sold tax free for use in the trades, professions or industries shall be guilty of a felony. *(Statutes 1937. ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

EXCISE TAX ON SALES TO COMMON CARRIERS.

SEC. 67.5. No tax under this act shall be imposed upon the sale of alcoholic beverages by a licensee in this State to a common carrier when such alcoholic beverages are to be used without this State; nor in such case need such common carrier procure a license under this act for purposes of purchasing such alcoholic beverages from a licensed manufacturer, rectifier, importer or wholesaler.

Whenever distilled spirits are sold by manufacturers, rectifiers, importers or wholesalers to common carriers engaged in interstate or foreign passenger service for use or sale by such carriers partly within the State and partly without the State on board boats or trains the tax imposed by section 24 of this act shall not be levied on the sales made by manufacturers, rectifiers, importers or wholesalers, nor shall the tax be collected in accordance with the provisions of sections 33 to 33c, but the excise tax on sales of distilled spirits in such cases shall be levied and collected as provided in this section.

An excise tax is hereby levied on sales of distilled spirits made by common carriers on board boats and trains in California at the same rates as set forth in section 24. On or before the first day of each month such common carriers shall render to the board a verified report of the sales of distilled spirits made by such common carriers on board trains and boats in California in the calendar month preceding the previous calendar month, in such detail and form as the board may prescribe, together with a payment sufficient to purchase a quantity of distilled spirits excise tax stamps representing the tax at the rates set forth in section 24 on such sales made in said month. Thereupon the board shall set aside distilled spirits excise tax stamps in an amount equivalent to the amount of such payment. Such stamps so set aside shall not be delivered to the common carrier, but subsequently the board or its employees shall destroy the same in the presence of a representative of the Department of Finance.

The board shall from time to time make examinations to determine the accuracy of the reports of sales submitted by common carriers. The board shall have the power and is hereby authorized to make such rules and regulations for the enforcement of the provisions of this section as it shall deem is necessary to adequately insure the collection of the excise tax. *(Statutes 1937, ch. 758; operative July 1, 1937.)*

History.—Added by Stats. 1937, ch. 758.

1933 LIQUOR CONTROL AND BEVERAGE TAX ACTS EFFECTIVE UNTIL JULY 1, 1935.

SEC. 68. The State Liquor Control Act, Chapter 658, Statutes of 1933, and Chapter 178, Statutes of 1933, shall remain in effect until July 1, 1935, after which date said acts shall no longer be of any force and effect; provided, that any taxes imposed pursuant to Chapter 178, Statutes of 1933, prior to said date shall remain fully collectible. *(Original section; Statutes 1935, p. 1123.)*

SCHEDULE OF LAWS REPEALED.

SEC. 69. The following acts and sections, together with all amendments thereof and all acts supplementary thereto, are repealed.

Year	Chapter	Page	Year	Chapter	Page
1855	188	240	1895	156	161
1858	232	193	1903	240	319
1860	223	186	1905	26	20
1871–72	188	231	1905	123	126
1873–74	13	12	1907	104	127
1873–74	27	27	1909	413	722
1873–74	198	297	1911	351	599
1873–74	300	434	1915	21	20
1873–74	345	509	1921	80	79
1875–76	473	691	1925	89	221
1880	83	80	1933	51	340
1889	241	352	1933	149	598
1891	87	91			

PENAL CODE SECTIONS.

63b 397b 680

POLITICAL CODE SECTIONS.

3381
3383

SCHOOL CODE SECTIONS.

3.80
3.81

(Original section; Statutes 1935, p. 1123.)

Section 172 of the Penal Code.—Section 172 of the Penal Code, prohibiting the sale of liquor within certain distances of institutions therein named, was not repealed either specifically or by implication by section 69 of the Alcoholic Beverage Control Act. (*In re Zadro* (1936), 86 C. A. D. 820.)

CONSTITUTIONALITY.

SEC. 70. If any section, subsection, clause, sentence or phrase of this act which is reasonably separable from the remaining portion of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The Legislature hereby declares that it would have passed the remaining portions of this act irrespective of the fact that any such section, subsection, clause, sentence or phrase of this act be declared unconstitutional. *(Original section; Statutes 1935, p. 1123.)*

ACT EFFECTIVE IMMEDIATELY.

SEC. 71. This act, inasmuch as it provides for tax levies for the usual current expenses of the State, shall, under the provisions of section 1 of Article IV of the Constitution, take effect immediately. *(Original section; Statutes 1935, p. 1123.)*

NOTE.—The last section of Stats. 1937, ch. 758, provides as follows:

"SEC. 102. This act, inasmuch as it provides for a tax levy for the usual current expenses of the State, shall, under the provisions of section 1 of Article IV of the Constitution, take effect immediately; provided, however, that the provisions of the Alcoholic Beverage Control Act as they existed on January 1, 1937, are hereby continued in force until July 1, 1937, and that the provisions hereof shall become operative on July 1, 1937."

CASES ARISING UNDER PROVISIONS OF LIQUOR CONTROL AND BEVERAGE TAX ACTS OF 1933.*

The definition of wine as contained in the State Liquor Control Act (Stats. 1933, p. 1697) should be considered in construing beverage tax acts passed earlier in the same year (Stats. 1933, pp. 340 and 626). Thus a person who operated a winery, and manufactured and sold wine within the meaning of the control act, was obliged to pay the excise tax of two cents per gallon imposed by the taxing statutes, notwithstanding the fact that such wine exceeded the alcoholic content specified in those statutes. He was not entitled to engage in business merely by paying the fee of $10 imposed upon a winery by the provisions of the State Liquor Control Act. (*Lucchesi* vs. *State Board of Equalization*, 137 Cal. App. 478.)

A license issued by the State Board of Equalization to sell intoxicating liquor within a mile and a half of Stanford University was annulled by the Supreme Court inasmuch as section 172a of the Penal Code makes such sales a misdemeanor. The court determined that the area within which liquor sales are to be prohibited shall be measured by a straight and direct line from the campus limits and not from university buildings within such limits. (*Leland Stanford Junior University* vs. *State Board of Equalization*, 1 Cal. (2d) 784).

No public offense was stated in a complaint for violation of the State Liquor Control Act, alleging that a sale of intoxicating liquor was unlawfully made, but omitting to allege that such sale was of a "broken package" or "to be consumed on the premises," where the sale was made. In the absence of such averments, the transaction was as consistent with innocence as with guilt. (*In re Ferrari*, 3 Cal. App. (2d) 53.)

Where the State Board of Equalization, upon an independent investigation, is in possession of facts sufficient to support the conclusion that a licensee has been guilty of acts or omissions which are grounds for revocation or suspension of the license, it may make an appropriate order without notice or hearing. There is no inherent right in a citizen to sell intoxicants. A license to do so is but a permit to do what would otherwise be unlawful, and consequently, a statute authorizing its revocation does not violate the due process clause, and it may be revoked without notice or hearing without invading any constitutional guarantees. (*State Board of Equalization* vs. *Superior Court of San Francisco*, 5 Cal. App. (2d) 347.)

BOARD HAS BROAD LICENSING POWERS.

Section 22 of Article XX of the Constitution (prior to its amendment November 6, 1934) provided no limitation on the power given to the Legislature to regulate the sale of wines and beer when meals are furnished. A reasonable construction of the acts of the Legislature and the rules and regulations of the State Board of Equalization made in pursuance thereof, gives the board the power to determine the suitability and fitness of the premises, including the nature of the location, and to

* Cases are cited for any value they may have in interpreting the Alcoholic Beverage Control Act.

consider questions affecting the peace, safety and good order of the surroundings where the sale is to be made. (*Parente* vs. *State Board of Equalization* (1934), 1 Cal. App. (2d) 238.)

"PUBLIC DRINKING PLACE" DEFINED.

A dining room of a hotel would become a "public drinking place" within the meaning of section 22 of Article XX of the Constitution (prior to amendment on November 6, 1934) and the State Liquor Control Act (Chapter 658, Statutes of 1933) if liquor other than beer and wine should be consumed therein. This would be true whether such liquor was brought into the dining room by a patron of the hotel, or was purchased by the hotel employees for the patron at a retail liquor store and served to him in the dining room. (*Sandelin* vs. *Collins* (1934), 1 Cal. (2d) 147.) In this same case, however, the court held that a sandwich served to a patron along with wine or beer could constitute a meal within the meaning of the Constitution and statute, whether or not such sandwich is consumed.

BLANK

PAGE

INDEX

	Section
ACTIONS	
recovery of tax payed under protest	32
tax deficiency	30
ADVERTISEMENTS	
furnishing to on-sale premises by manufacturers, etc.	
restrictions on	54(d)
minors, encouraging to drink	55.2
restrictions on signs	55
AGENT, DISTILLED SPIRITS MANUFACTURER'S: license	6(n)
ALCOHOL	
defined	2(a)
denatured, act not applicable to	67
industrial	67, 67.1
undenatured, possession of	6.7
ALCOHOLIC BEVERAGE: defined	2(b)
ALE. See BEER.	
ALIENS: licenses, restrictions on issuance to	12
APPLICATIONS FOR LICENSES	
contents	10
denial of	11
grounds	11
notice of	39
investigation	11
protests	39
BAR	
premises with more than one	7
public—	
defined	2(m)
selling at, misdemeanor	53
BEER	
alcoholic content	55
brand names	53.6
containers, size of	53.6
defined	2(c)
excise tax—	
amount of	23
payment of	26
labels	53.5, 55
license privileges	6
licenses. See LICENSES, this index.	
manufacturer or importer—	
bond of	25
reports required	26
spigot markers	53.6, 55

INDEX—Continued

	Section
BOARD	
administration of act by	38
credit term rules	55.8
defined	2(g)
employees—	
powers of peace officers	38d
oaths, may administer	38c
hearings. See HEARINGS, this index.	
rules and regulations of	38
BOATS	
on-sale licenses—	
fees	5
average number in operation, based on	7
privileges	6(j)
BOND	
beer and wine, manufacturer and importer, required of	25
distilled spirits manufacturer, etc.	24.7
suit for forfeiture of	33
BOOKS	
examination of	27, 38b
refusal to permit	28
falsifying or altering	28
retail distilled spirits licensees'	24.4
BOTTLE	
"to bottle" defined	2(o)
BOTTLING	
license	6(e)
wine	6(e1)
BRANDY	
manufacturer	2(o)
defined	2
license privileges	6(a)
to whom may be issued	19
BROKER	
defined	2(y)
license privileges	6(k)
BROWN. See BEER.	
CAMP. See PUBLIC WORKS CAMP.	
CARRIERS.	
deliveries of imports by, restrictions on	49
reports of imports to Board	49.2
taxing sales of distilled spirits by	67.5
CASE: defined	2(z)
CHURCH: on-sale premises in vicinity of	13.
CLUB	
defined	2(h)
on-sale licenses issued to, when	18

INDEX—Continued

	Section
COMPLAINTS	
form of	40
by member or employee of Board	40
local legislative bodies, by	40.5
bearings on. See HEARINGS, this index.	
CONSTITUTIONALITY	70
CONSTRUCTION CAMP. See PUBLIC WORKS CAMP.	
COUNTERFEITING EXCISE STAMPS: felony	36
CREDIT TERM REGULATIONS	55.8
DELINQUENT EXCISE TAXES	
assessment roll	26, 31g
bond, suit to effect forfeiture	31e
Controller, duties of	31, 26
cumulative, remedies are	31f
judgment—	
abstract of, recording	31a
Controller's certificate	31
lien	31
penalties	26
summary seizure and sale	31e, 31d
third persons holding credits, notice to	31b
when	26
DELIVERIES	
carriers, by	49
manufacturers, etc., by, restrictions on	60
DEPOSITIONS: when may be taken	42
DESTRUCTION, SUMMARY. See SEIZURE.	
DISORDERLY HOUSES	58
DISTILLED SPIRITS	
defined	2(a)
excise tax—	
amount	24
collection, stamps	33
labels	34
manufacturer—	
not to hold other licenses	20½
selling to retailers	6.9
possession, when unlawful	51
restrictions on number of licenses in cities	14.5
seizure—	
and destruction	34
and sale	51
size of packages	34
stamps—	
cancelling	33
possession of, without	24.5
when must be placed on bottles	33
DRUNKARD, HABITUAL	
selling or giving to, misdemeanor	62
EFFECTIVE DATE	71
ELECTION DAYS: selling on	59

INDEX—Continued

	Section
EMPLOYMENT	
hostesses, entertainers, on percentage, misdemeanor	57
minors, on-sale premises, misdemeanor	56
EMPTIED BOTTLES	36.b
ENTERTAINERS. See EMPLOYMENT.	
EVASION OF TAX	
containers—	
emptied, possession of	36b
refilling	36a
diverting industrial alcohol	52½
unlawful	67.1
EXCISE TAX	
assessment, beer and wine	26b
additional	27
beer	23
champagne	23
delinquent. See DELINQUENT EXCISE TAXES.	
distilled spirits	24
additional levies	27
evasions. See EVASION OF TAX.	
exemptions—	
beer and wine	23
distilled spirits	24.2
governmental agencies	67
hospitals	67
industrial uses	67
manufacturer or importer, sales to	29
verified statement necessary	29
nonbeverage uses	67
universities	67
payment to State—	
beer and wine	26
distilled spirits; stamps	33
penalties	26
refunds	27
sparkling wine	23
stamps. See STAMPS.	
wine	23
EXPORTER: defined	2(kl)
EXPORTS: exempt from tax	23b, 24.2
FAIR TRADE CONTRACTS	55.5
FEDERAL RESERVATIONS: sales to persons on	6(r)
FEES, LICENSE	
penalties	8
quarterly	5
refunds	11, 11a
schedule of	5
varying—	
reports of off-sale distilled spirits licensees	22
reports of wine manufacturers	22a
FELONY. See particular subject.	
punishment	65a

INDEX—Continued

	Section
FINDINGS	43
FINES: disposition of	65b
FORFEITURE. See SEIZURE.	
automobiles	51g
bond, suit to effect	31
imports	49.2
postal shipments, when	49.4
proceedings	52
what subject to	51b
FRAUD	
stamps	36
FREE GOODS	54(h), 55.7
FUNDS COLLECTED: disposition of	37
GALLON	
defined	2(v)
proof	2(r)
HEARINGS	
appearance, failure of by applicant or licensee	41
assessments, beer and wine	27
complaint	40
conduct of	42
decision	44
notice of	44
distilled spirits relevy	27c
evidence, rules of	42
findings	43
notice of time and place	41
to whom given	41
notices, services of	48
oaths	41
protest	39
reconsideration, petition for	45
review by courts	46
setting cause for	41
subpoenas	41
disobedience to	41
witnesses	41
fees	41
depositions	42
failure to appear	41
HOSPITALS	
on-sale premises near, restrictions	13
HOSTESS. See EMPLOYMENT.	
HOURS OF SALE	
manufacturers, wholesalers, etc.	60
retail licensees	59.5
HOUSES, DISORDERLY. See DISORDERLY HOUSES.	

INDEX—Continued

	Section
IMPORTERS. See BOND; CARRIERS.	
consignment of imports to	49
defined	2(k)
license	6(d)
owning interest in on-sale premises, restrictions on	54
reports on beer and wine sales	26
IMPORTS. See CARRIERS; IMPORTERS; POSTAL SHIPMENTS.	
INDUSTRIAL ALCOHOL	
dealer, defined	2(i3)
labels	34(g)
license—	
privileges of	6(i)
to whom issued	20
tax exemption	67, 67.1
INTERSTATE SHIPMENTS IN TRANSIT	66
LABELS	
beer	53.5, 55
distilled spirits	34
LICENSEE: defined	2(z1)
LICENSES	
applications for	10
certificate, lost	7
citizenship qualifications	12
denial	11
eating places	18
failure to obtain, misdemeanor	3
fees. See FEES, LICENSE.	
on-sale, issued to whom	18
penalty for failure to pay renewal fee	8
period for which issued	8
posting and signing	9
premises near churches, schools, etc.	13
privileges of	6
public works camps	17
renewal	8
revocation or suspension	40
temporary	8
transferability	7
zoning ordinances	15
LOCAL AUTHORITIES: enforcement	66.5
MANUFACTURER. See BEER; WINE; DISTILLED SPIRITS; BOOKS.	
agent	6(n)
defined	2
license	6(a), 6(m)
owning interest in on-sale premises, restrictions on	54
on-sale license not to be issued to	16
reports of beer and wine sales	26
MINORS	
employment of, when unlawful	56
sales to	61

INDEX—Continued

	Section
MISDEMEANOR. See particular subject.	
punishment	65
NOTICES	
publication and posting, intended uses of premises	21
local officials, to	21
service of	48
OATHS: Board members and employees may administer	38c
OFF-SALE LICENSES	
distilled spirits, issuance to wholesalers	16½
privileges of	6(g), 6(h)
OFFICERS	
local, enforcement by	66.5
powers of Board's employees	38d
ON-SALE LICENSES	
owning interest in manufacturer's, etc., license	54.5
privileges of	6(j)
restrictions on issuance	16, 18
PACKAGE: defined	2(n)
PACKAGING LICENSE	(e), 6(e1)
PEACE OFFICERS. See OFFICERS; BOARD.	
PENALTIES.	
excise tax	26a
license, failure to pay renewal fee	8
PERCENTAGE: employment of persons on	57
PERSON: defined	2(f)
PLAYGROUNDS: on-sale premises near	13
PORTER. See BEER.	
POSSESSION, UNLAWFUL	
beverages other than licensed for	50
distilled spirits without stamps	34
POSTAL SHIPMENTS: forfeiture	50
PREMISES. See LICENSES.	
PRICE POSTING	38e
PROOF GALLON: defined	2(r)
PROOF SPIRITS: defined	2(q)
PROTESTS. See HEARING.	
PUBLIC WORKS CAMP: licenses, issuing within what distance of	17
PURE FOOD ACT: violation of	48.5
REBATES	54(i)
RECONSIDERATION. See HEARINGS.	
RECORDS. See BOOKS.	

INDEX—Continued

	Section
RECTIFIER	
defined	2(j)
licenses	6(c)
on-sale premises, restrictions on owning interest in	54
REFUNDS	
license fees	11
tax	27, 33e
REPEAL: of certain laws	69
REPORTS	
Board may require, what	38a
license fees, varying—	
off-sale distilled spirits licensees	22
wine manufacturers	22a
tax	26
when deemed to be made	22d
RESERVATIONS, FEDERAL	6(r)
RETAIL SALE: defined	2(k4)
RETAILER	
defined	2(i4)
license, off-sale—	
beer and wine	6(g)
distilled spirits	6(h)
license, on-sale—	
defined	2(u)
privileges	6(j)
resale, purchases for, restrictions on	6.6
restrictions on issuance to manufacturer, importer, wholesaler	16
REVIEW: by courts of board's decisions	46
REVOCATION OF LICENSES	
grounds for	40
notice to manufacturers, wholesalers, etc	48.6
premises, effect on	14
RULES AND REGULATIONS	38
SAKE	2(c), 2(e)
SALE	
defined	2(l), 24.3
excise tax on—	
beer and wine	23
distilled spirits	24
on consignment	54(g)
what prohibited. See particular subject.	
SALESMAN	
defined	2(z2)
violations by	6.8
SALOON. See **BAR.**	
defined	2(m)
SAMPLES	6.5

INDEX—Continued

	Section
SCHOOLS	
on-sale premises near	13
sales on grounds of	64
SEIZURE	
alcoholic beverages subject to	34, 50, 51
automobiles	51g
disposition	51d
forfeiture proceedings	52
record of	51e
sale at public auction	51d
stills and other property	51a
summary destruction	34
unlawful disposal after	51f
SHIPMENTS. See CARRIERS.	
postal	49.4
SHORT TITLE	1
SIGNS	
furnishing to on-sale premises by manufacturers	54(d)
restrictions on	55
SPIRITS. See DISTILLED SPIRITS.	
SPIRITS, PROOF: defined	2(q)
STAMPS. See EXCISE TAX.	
attaching to packages	33
cancellation of	33c
character of	33a
counterfeiting	36
delivery of	33b
failure to attach to packages	34
fraudulent use	36
obliterating	28
purchase, who may	33
possession, when unlawful	35a
refunds for	33e
replacement	33d
sales of, when unlawful	35
seizure	35c
STILL	
defined	2(x)
license	6(b)
seizure	51a
STOUT. See BEER.	
SUBPOENAS	
disobedience to	41
issuance	41
SURETY. See BOND.	
SUSPENSION. See REVOCATION OF LICENSES.	
TAPPING ACCESSORIES	
restrictions on furnishing to on-sale premises	54(1)

INDEX—Continued

	Section
TAX. See EXCISE TAX; DELINQUENT EXCISE TAXES; EVASION OF TAX; STAMPS.	
TRAIN	
license, on-sale—	
fee, average number in operation	7
privileges of	6(j)
WAITRESS: employment of on percentage basis	57
WAREHOUSE	
private—	
defined	2(k2)
storage in	7
public—	
defined	2(k3)
license privileges	6(1)
storage in	7
receipts, sale of after foreclosure	4
WHOLESALER	
defined	2(s)
restrictions on time of deliveries	60
furnishing equipment to or financing on-sale premises	54
license privileges	6(f)
owning interest in on-sale premises, prohibited	54
sale, defined	2(t)
WINE	
bottling license	6(e1)
champagne, tax on	23
containers, size of	53.6
defined	2(e)
excise tax—	
amount of	23
payment of	26c
manufacturer or importer—	
bond of	25
reports	26
sake	2(c),
ZONING ORDINANCES	15

o

45518 7-37 25M

EXHIBIT "B".

Section 1 of the Act of June 11, 1906 (34 Statutes 831).

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the recession and regranting unto the United States by the State of California of the cleft or gorge in the granite peak of the Sierra Nevada Mountains, situated in the county of Mariposa, State of California, and the headwaters of the Merced River, and known as the Yosemite Valley, with its branches or spurs, granted unto the State of California in trust for public use, resort, and recreation by the Act of Congress entitled "An Act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the Mariposa Big Tree Grove," approved June thirtieth, eighteen hundred and sixty-four (Thirteenth Statutes, page three hundred and twenty-five), as well as the tracts embracing what is known as the "Mariposa Big Tree Grove," likewise granted unto the State of California by the aforesaid Act of Congress, is hereby ratified and accepted, and the tracts of lands embracing the Yosemite Valley and the Mariposa Big Tree Grove, as described in the Act of Congress approved June thirtieth, eighteen hundred and sixty-four, together with that part of fractional sections five and six, township five south, range twenty-two east, Mount Diablo meridian, California, lying south of the South Fork of Merced River and almost wholly between the Mariposa Big Tree Grove and the present south boundary of the Yosemite National Park, be, and the same are hereby, reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States and set apart as reserved forest lands, subject to all the limitations, conditions, and provisions of the Act of Congress approved October first, eighteen hundred and ninety, entitled "An Act to set apart certain tracts of land in the State of California as forest reservations," as well as the limitations, conditions, and provisions of the Act of Congress approved February seventh, nineteen hundred and five, entitled "An Act to exclude from the Yosemite National Park, California, cer-

tain lands therein described, and to attach and include the said lands in the Sierra Forest Reserve," and shall hereafter form a part of the Yosemite National Park.

EXHIBIT "C".

Section 1 of the Act of June 2, 1920 (41 Statutes 731).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of the Legislature of the State of California (approved April 15, 1919), ceding to the United States exclusive jurisdiction over the territory embraced and included within the Yosemite National Park, Sequoia National Park, and General Grant National Park, respectively, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving however, to the said State of California the right to serve civil or criminal process within the limits of the aforesaid parks or either of them in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said parks; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situated. All the laws applicable to places under sole and exclusive jurisdiction of the United States shall have force and effect in said parks or either of them. All fugitives from justice taking refuge in said parks, or either of them, shall be subject to the same laws as refugees from justice found in the State of California.

EXHIBIT "D".

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

In Equity. No. 4165.

YOSEMITE PARK AND CURRY CO., a Corporation, *Plaintiff*,

v.

R. E. COLLINS et al. (State Board of Equalization of the State of California), *Defendants*.

Opinion.

Before Wilbur, Circuit Judge, and St. Sure and Roche, District Judges.

ROCHE, *District Judge:*

The question in this case deals with the applicability of the "Alcoholic Beverage Control Act of the State of California"[1] in all its taxing, licensing and policing provisions, to the Yosemite National Park located within the territorial limits of California.

The answer depends upon the respective jurisdictions of the State and the United States over the Park, and this in turn revolves around the methods by which, and the extent to which, the federal government may acquire jurisdiction of lands ceded to it by states for national park purposes. The Supreme Court in *Arlington* v. *Fant*, 278 U. S. 439, 454, characterized the question as novel, saying:

> "This issue may in the future become a subject of constitutional controversy, because some twenty or more parks have been created by Congress, in a number of which exclusive jurisdiction over the land has been conferred by act of cession of the State. We do not find it necessary, however, now to examine this question."

---

[1] 1935 Cal. Stats. Ch. 330.

Briefly, the Beverage Control Act is a complete liquor regulation measure for California.[1] It provides for various licensing fees of importers, retailers and wholesalers. It has a schedule of excise taxes applicable to the sale of different types of liquors and wines and beers. It has definite provisions for the areas within which liquor may be sold. It gives state officers the right to prescribe the accounting and bookkeeping systems which dealers in liquors must use. It enables the State Board of Equalization, which administers the Act, to require liquor dealers to obtain the endorsement of a certain number of property owners in the area where the dealers are to be licensed, and to furnish bond for security of tax collection. It has also many other features which make it extremely comprehensive and which give the State Board of Equalization complete regulatory power.

Plaintiff, the Yosemite Park and Curry Company, is seeking to enjoin the State Board of Equalization and the State Attorney General from enforcing the Beverage Control Act within the Park. Plaintiff is engaged in the operation of hotels, camps, stores, transportation facilities, utilities and other businesses within the Park. There is a contract between the plaintiff and the Secretary of the Interior leasing portions of the Park to plaintiff for a twenty year term. The intent of the contract is to carry out the Congressional desire to make the Park a resort and playground for the benefit of the public (Contract Art. VI(d).) The contract places upon plaintiff the duty of furnishing the aforementioned facilities for the accommodation of visitors in the Park. A part of such duty is the sale of liquors, beers and wines to Park visitors. It is in respect to these alcoholic beverages that the State threatens to take action under its Beverage Control Act. The prices which plaintiff can charge can be established only with the approval of the Secretary of the Interior (Contract Art. VI(e).) Plaintiff is limited to an annual six percent cumulative return upon its investment (Contract Art. VI(b)2). It must pay to the Secretary of the Interior $5,000 a year as rent for the first

---

[1] 1935 Cal. Stats. Ch. 330.

ten years (Contract Art. VI(b)1). If it earns more than six percent and declares excess dividends, twenty-five percent of the amount so declared must go to the Secretary of the Interior (Contract Art. VI(b)6). During the second ten years, plaintiff is excused from the $5,000 payments and need only pay twenty-two and one-half percent of its excess dividends to the Secretary (Contract Art. VI(c)).

Before further detailing the facts of the case, it is necessary to point out that the Park consists of Yosemite Valley plus a great amount of surrounding territory. The Valley has been the subject of statutory cessions different from the balance of the Park (hereafter called the Park as distinguished from the Valley). We therefore shall consider separately the problems presented by the two cessions.

First.

The Valley.

All of the area in question, including the entire territory comprising California and many western states, was acquired by the United States from Mexico in 1848 by the Treaty of Guadalupe Hidalgo.[2] California was admitted to statehood in 1850, the United States reserving its proprietary rights to the Valley and other unappropriated public lands,[3] *Fort Leavenworth R. R. Co.* v. *Lowe,* 114 U. S. 525, 50 C. J. 887. The Congress gave the Valley to California in trust for public park and recreational purposes June 30, 1864,[4] thus relinquishing the previously reserved federal proprietary rights. In 1891 California enacted a law[5] reading:

> "The State . . . hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may hereafter be ceded or conveyed to the United States, during the time the United States shall be or remain the owner

---

[2] 9 Stats. 922.

[3] 9 Stats. 452.

[4] 13 Stats. 325.

[5] 1891 Cal. Stats. 262.

thereof, for all purposes except the administration of the criminal laws of this State and the service of civil process therein."

By Act of March 3, 1905, the California Legislature did:

> "* * * hereby recede and regrant unto the United States of America * * * the Yosemite Valley * * * and the State of California does hereby relinquish unto the United States of America and resign the trusts created and granted * * *" for public park purposes.

The statute further provided:

> "* * * the same to be held for all time by the United States of America for public use, resort and recreation."

The United States by Act of June 11, 1906,[6] accepted the regrant. There are no other statutes pertaining to the Valley, other than the California statute of 1919, hereinafter referred to, ceding jurisdiction to the federal government over the entire Park which includes the Valley.

The problem now arises, do the recited facts show that exclusive jurisdiction of the Valley is vested in the United States? If they do, of course the State has no right to enforce its liquor laws therein.

We hold that the United States has exclusive jurisdiction of the Valley.

(1) In reference to the statutes granting the Valley to the State and regranting it to the United States, the defendants state at page five of their opening brief:

> "But neither of these acts granted territorial or governmental jurisdiction to the grantee and so may be disregarded."

We agree that the United States had only a proprietary interest in the Valley and that no jurisdiction passed from

---

[6] 34 Stats. 831.

the United States to California or vice versa by virtue of the Acts of 1864 and 1905 alone. That much is conceded by plaintiff and by the United States. But we are inclined to heed these statutes, for they have a further significance.

The State regranting act of 1905 taken in conjunction with the California statute of 1891 generally ceding exclusive jurisdiction to the United States in all cases of transfer of land, establishes beyond a doubt that exclusive jurisdiction of the Valley is now in the United States.

(2) The State contends that regardless of what has been said, the State Legislature had no power to give up its taxing authority over the Valley. There is no federal constitutional prohibition against such a relinquishment. No State measure forbidding the transfer of jurisdiction has been cited to us. On the contrary, section 33 of the California Political Code provides for such transfers. What is relied upon is a California constitutional provision forbidding the giving away of the taxing power.[7] In *Yellowstone etc. Co.* v. *Gallatin County*, (C. C. A. 9) 31 F. 2d. 644, a similar argument was examined and found to be without merit. Defendants have simply misapplied a general rule of state sovereignty to a situation in which the principal issue of territorial jurisdiction controls the right to tax. The Supreme Court, in *Standard Oil Co.* v. *California*, 291 U. S. 242, considered the effect of a cession of exclusive jurisdiction over the Presidio in San Francisco by the State to the United States. It was held that the State's right to tax also had been ceded.

(3) It is further argued on behalf of the State that the United States had no power under which it could obtain exclusive jurisdiction of the Valley when the Valley was not purchased with the consent of the State, and was not to be used for the Erection of Forts, Magazines, Arsenals, Dock-Yards and other needful Buildings * * *" as specified in Article I, Section 8, Clause 17 of the federal constitution. It is said in defendants' opening brief (p. 6) that the only manner mentioned in the Constitution for the

---

[7] Cal. Const. Art. XIII, Sec. 6.

United States to obtain exclusive jurisdiction of land by the acquisition thereof alone, is that set forth in the quoted clause. The proposition can be conceded, but is far from controlling. We may further concede the next statement made, that when the federal government acquires land and jurisdiction thereof in any other way than that outlined in Article I, Section 8, Clause 17 (in this case by cession), for the purposes mentioned in that clause, the State can make any reservation of jurisdiction it deems desirable short of imposing any conditions inconsistent with the use the United States desires to make of the territory. By the same token, the State can grant exclusive jurisdiction if it fails to impose conditions. As far as the Valley is concerned, that is exactly what occurred. It is sufficient to cite *Standard Oil Co.* v. *California*, above, and *Arlington* v. *Fant*, above, to the effect that exclusive jurisdiction can be obtained by the United States upon cession of land by a state and without purchase by the United States with the consent of the State where the use is one set out in Article I, Section 8, Clause 17.

It is thus seen that the only question involved is whether a State's cession of exclusive jurisdiction to the United States of land used for park or other purposes not enumerated in Article I, Section 8, Clause 17, can be accepted by the latter. And defendants' argument in its essence is that such a procedure is impossible because park purposes are not mentioned in the quoted clause. Defendants' position is not sound. Moreover, it is unsupported by the authorities.

First, there is no constitutional prohibition against states ceding territory or jurisdiction to the United States, nor any constitutional mandate placing the power to cede state territory in the federal government. Therefore such a power, being an inherent incident of sovereignty, must reside in the states, subject to the limitation, immaterial here, of denying a state the right to cede territory to foreign nations without consent of the Congress (*Fort Leavenworth R. R. Co.* v. *Lowe*, above).

Second, the power to acquire jurisdiction by treaty, war, discovery or cession, is an attribute of any sovereignty,

whether it be a limited one or not. *Jones* v. *U. S.*, 137 U. S. 202 at 212.

Third, altho the United States has no express power to accept even limited jurisdiction over ceded territory—yet defendants concede such power, and the courts and history sustain it. *Benson* v. *U. S.*, 146 U. S. 325, 330. Nor can express constitutional permission to accept exclusive jurisdiction by means other than purchase with state consent be found; yet other methods have been sanctioned by practice and the Supreme Court. *Standard Oil Co.* v. *California,* above; *U. S.* v. *Unzeuta,* 281 U. S. 138.

Fourth, in *Chicago etc. Ry.* v. *McGlinn,* 114 U. S. 542 at 546, we find the court saying:

> "* * * it is competent for the legislature of a State to cede exclusive jurisdiction over places needed by the general government in the execution of its powers * * * such jurisdiction necessarily ending when the places ceased to be used for such purposes."

We do not believe that it can be denied that the federal government is here exercising a proper governmental function. Under *U. S.* v. *Butler,* 297 U. S. 1, it could tax to raise money to buy parks under the "general welfare" clause.[8] Park and recreational facilities clearly provide for the general welfare. Likewise, it has never been hinted even remotely that the federal government did not have the power under Article IV, Section 3, Clause 2 to provide for the establishment of parks on land the United States had already acquired, whether by conquest, cession or purchase. We therefore think that the federal government could accept jurisdiction under the McGlinn case doctrine. *Yellowstone Park Transportation Co.* v. *Gallatin Co.*, above; *Rainier National Park* v. *Martin,* 18 F. Supp. 481 lend further support to this view.

For the foregoing reasons it is concluded that the United States can and did accept exclusive jurisdiction over the Valley for park purposes.

---

[8] Const. Art. I, Sec. 8, Cl. 1.

(4) We turn then to the problem of whether or not the Twenty-First Amendment permits the State to tax liquor within the Valley. That amendment says:

> "The transportation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Defendants would have us hold that so long as such land is "territorially" within the state, it is immaterial that such land is beyond the jurisdiction of the state, so far as this amendment is concerned. It is argued:

> "* * * the 21st amendment which deals solely with states, territories and possessions of the United States, can only relate to these places territorially and not politically. There is no suggestion in the 21st amendment there were to be areas within states over which such states could not control intoxicating liquors."

We are not convinced that the Twenty-First Amendment serves to extend to states a grant of jurisdiction over territories which formerly they could not control. There is nothing in the Amendment to indicate such a purpose, any more than there is to indicate a granting of power to California to tax liquor sales and traffic in Oregon, which clearly would be absurd. Once a state relinquishes its jurisdiction over territory within its limits, its power over that particular land is gone absolutely. *Standard Oil Co.* v. *California,* above. A state's right to tax liquor is a matter of power and jurisdiction. While the Amendment may have increased the state's power to deal with the problem (see *State Board* v. *Young's Market,* 299 U. S. 59), it did not increase its jurisdiction.

Defendants, by analogy to *State Board* v. *Young's Market,* above, proposed to interpret the Twenty-First Amendment in such a way as to modify normal federal powers of sovereignty insofar as liquor regulation is concerned. In the *Young's Market* case it was held that a beer importer's license fee of $500 imposed by the State of California was not violative of the Commerce Clause or the Equal Protec-

tion Clause of the Fourteenth Amendment. The Supreme Court pointed out that as the Twenty-First Amendment prohibited the "Importation" into a state of intoxicants in violation of the laws thereof, the Commerce Clause to that extent was necessarily and explicitly overruled; and that any classification permitted by the Twenty-First Amendment could not be violative of the Fourteenth.

We think it is straining the Youngs Market case too much to try to apply it to the present controversy where the facts and constitutional provisions involved are so widely divergent. No intent to relinquish the exclusive jurisdiction of the government to the states can fairly be deduced. *Fort Leavenworth R. R. Co.* v. *Lowe*, above.

(5) The State having no jurisdiction within the Valley, it is immaterial whether the plaintiff is or is not a federal instrumentality—in either case the taxing power of California cannot reach it. Similarly, the cases in which the federal government has been permitted to tax state-owned and controlled liquor establishments, and which defendants contend justify a state tax on national liquor agencies, are not in point because the State has no jurisdiction whatsoever within the Valley. Thus *South Carolina* v. *U. S.*, 199 U. S. 437 and like decisions have no bearing on the principal case.

SECOND.

The Park Outside of the Valley.

When in 1890 the United States set aside certain of its public lands to establish the Park,[9] the federal interest was merely proprietary. Jurisdiction of the lands comprising the Park was in the State, where it remained unil 1919. In that year jurisdiction of the Park was offered to the National Government, which had always retained the proprietary interest:[10]

> "Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the Territory which is now or may hereafter be in-

[9] 26 Stats. 650.

[10] 1919 Cal. Stats. 51.

> cluded in * * * 'Yosemite National Park' * * *; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to tax and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situate; provided, however, that jurisdiction shall not vest until the United States through the proper officer notifies the State of California that they assume police jurisdiction over said parks."

By Act of June 2, 1920,[11] jurisdiction of the Park was assumed by the United States. The acceptance statute, referring to the provisions of the California Act, said:

> "* * * are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving however, to the said State of California."

The reservations in the California statute were then set out verbatim. None of these statutes referred to or affected the Valley.

(1) What was said about the Valley in relation to the power of California to relinquish its taxing authority over territory ceded to the United States, is equally applicable to the Park. Hence, any voluntary disposal of taxing power in the Park would be valid. We believe, likewise, that what has been said previously in regard to the Twenty-first Amendment is also conclusive as to the Park.

(2) Next we approach the problem of the power of the United States to accept jurisdiction of the Park for recrea-

[11] 41 Stats. 731, 17 U. S. C. A. 57.

tional purposes. Since we have held, in our study of the Valley, that exclusive jurisdiction can be obtained, it follows that any lesser quantum of jurisdiction can also be accepted. *Fort Leavenworth R. R. Co.* v. *Lowe,* above. Under principles established in the Lowe case and reiterated in *Arlington* v. *Fant,* above, the state, in ceding jurisdiction, may impose any conditions or withhold any amount of jurisdiction it desires so long as such reservations do not interfere with the use to which the United States wishes to put the property. In relation to the Park, the State of California had the right to reserve taxing power, not inconsistent with the federal governmental use.

(3) We now pass to a consideration of the taxing power reserved by the State in the Act of 1919 granting jurisdiction of the Park to the United States, and confirmed by the United States in its acceptance statute of 1920.

Reference must be made to the case of *Rainier National Park Co.* v. *Martin* (D. C. Wash. 3 Judges), above, in which similar statutes on the same subject gave rise to a problem closely resembling that involved in the case at bar. Despite the surface similarity of issues, we believe it is possible to distinguish the two cases on at least one important point.

In the Washington case a divided court held that the federal government had consented to the levy of an excise tax on the Rainier National Park Company, which was assumed to be a federal instrumentality. Since the clause which led to this interpretation is the same as the saving clause in the federal acceptance of the California grant, it is important to investigate the reason which persuaded the court to hold as it did. Complete reliance was placed on the case of *Mid-Northern Oil Co.,* v. *Walker,* 268 U. S. 45, which the majority of the court felt to be controlling. What does an examination of that case reveal? A license tax, measured by the total gross value of crude oil produced, was imposed by the State of Montana on a federal instrumentality engaged in mining. The tax was levied under a statute which saved to the state "the right to levy and collect taxes upon improvements, output of mines, *or other rights,* property or assets of any lessee of the United States." (Italics ours.) Clearly the statute included in its broad language the very

tax which the state was collecting. But should such a case control one in which the tax reservation says that the state saves "the right to tax persons and corporations, their franchises and property"? We believe that the answer is "no". The former broad clause covers a license tax; the latter does not. We think that the Washington interpretation of that clause is a strained one, and cannot be applied to the facts of this case.

But granting that the District Court was correct in its ruling, we wish to point out two distinctions between the Washington case and the principal case which we feel should sustain a different holding. In the first place, the California statute differs from the Washington measure of 1901[12] in one important detail. In ceding Yosemite National Park to the federal government, California retained "the right to fix and collect license fees for fishing in said Park." Such an express reservation of the right to collect license fees for one purpose is an indication that the right to collect license fees for all other purposes was renounced. The Washington statute, on the other hand, contains no such reservation.

In the second place—and of fundamental significance—we feel that the nature of the California license tax is sufficiently different from that of the Washington business tax to warrant a different ruling. The California enactment is chiefly regulatory in nature, and is confined to the liquor business; the Washington statute is a revenue measure which covers innumerable trades. While a revenue measure does not preclude the possibility of a clash between sovereignties, it does not invite one as a regulatory measure does. California has ceded the Park to the United States, which has agreed to police it. Now, by reason of the Alcoholic Beverage Control Act, California evidently claims the retention of her police power. Such a claim is violative of the police jurisdiction placed in the hands of the National Government, and is void.

Since the primary purpose of California's tax measure is the regulation of the intoxicating liquor business; since such regulation constitutes an exercise of the police power which

---

[12] 1901 Session Laws, c. 92, p. 192, § 1.

is beyond the jurisdiction of the State, the measure cannot bestow upon California the power to collect license taxes from plaintiff for the importation and sale of liquors.

The motion to dismiss the complaint is denied; the motion for the issuance of a temporary injunction will be granted. Plaintiff will prepare and file proposed findings of fact, conclusions of law, and decree.

CURTIS D. WILBUR,
Judge, U. S. Circuit Court of Appeals.
MICHAEL J. ROCHE,
U. S. District Judge.
A. F. ST. SURE,
U. S. District Judge.

Waiver of Reply to Jurisdictional Statement.

Comes now the plaintiff and appellee and waives any and all reply to the appellants' statement of grounds of jurisdiction on appeal and submits forthwith the consideration of the question of jurisdiction upon said statement of appellants.

HERMAN PHLEGER,
MAURICE E. HARRISON,
HOWARD J. FINN,
GREGORY A. HARRISON,
JAMES L. MOORE, JR.,
THEODORE R. MEYER,
Attorneys for Plaintiff and Appellee.

Service Admitted Jany. 7, 1938.
BROBECK, PHLEGER & HARRISON,
Solicitor for Complainant.

Filed Jan. 18, 1938.

BLANK

PAGE

FILE COPY

Office - Supreme Court, U. S.
FILED
APR 14 1938
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 870

R. E. COLLINS, JOHN C. CORBETT and FRED R. STEWART et al.,
Appellants,

vs.

YOSEMITE PARK AND CURRY CO.,
Appellee.

APPELLANTS' OPENING BRIEF

U. S. WEBB,
Attorney General of the State of California,
SHELDON J. SHERWIN,
Deputy Attorney General,
[illegible] Building,
[illegible], California.

BLANK

PAGE

TABLE OF CONTENTS

	Page
A. STATEMENT OF FACTS	1
B. APPELLANTS' ARGUMENT	2
I. The Twenty-first Amendment Prohibits the Importations Here Involved Since They Are Contrary to the Laws of California	2
a. Lower Court's Interpretation of the Effect of the Twenty-first Amendment Erroneous	8
II: Even if the Twenty-first Amendment Is Totally Disregarded the Lower Court Erred Because the State Has Jurisdiction Over the Appellee Company Located in Yosemite National Park	10
III. In Any Event the State Has Jurisdiction to Tax Sales by the Appellee Company of Alcoholic Beverages	17
a. Prohibition Against Granting Away Taxing Power	17
b. Taxing Reservations in Acts of Cession and Acceptance	19
c. The Liquor Tax is Not a Regulatory Tax	25
C. CONCLUSION	26
Appendix A	27
Appendix B	27
Appendix C	28
Appendix D	29
Appendix E	31
Appendix F	32
Appendix G	33
Appendix H	48

BLANK

PAGE

INDEX TO AUTHORITIES CITED

	Page
Alcoholic Beverage Control Act, Section 2(w)	4
Alcoholic Beverage Control Act, Section 2(wl)	4
Alcoholic Beverage Control Act, Section 49	2
Alcoholic Beverage Control Act, Section 51	19, 20
Arlington vs. Fant, 278 U. S. 439	10, 15, 16
Battle vs. U. S. 209 U. S. 36	15
Benson vs. U. S., 146 U. S. 325	15
Brown vs. Maryland, 25 U. S. 419	8
Chicago, Rock Island & Pac. R. Co. vs. McGlinn, 114 U. S. 542	15–16
Com. vs. Kyle, 79 Fed. (2) 520	24
Constitution of California, Art. XIII	17
Constitution of California, Art. XXI	4
Fort Leavenworth R. R. Co. vs. Lowe, 114 U. S. 525	15, 18, 20
Grayburg Oil Co. vs. State, 3 S. W. (2d) 427	7
Grayburg Oil Co. vs. State, 286 S. W. 489	7
James vs. Dravo Construction Co., 58 Sup. Ct. Rep. 208	16, 18, 20
Leisy vs. Hardin, 135 U. S. 100	8
McKesson & Robbins, Inc. vs. Collins, 18 Cal. App. (2d) 648	7
New Orleans vs. United States, 35 U.S. 660	14
Nikis vs. Com. of Va. 131 S. E. 236	14
Ohio vs. Helvering, 292 U. S. 360	24
Political Code, Sec. 34	12
Rainier National Park Co. vs. Henneford, 182 Wash. 159	5, 21, 22
Rainier National Park Co. vs. Martin, 18 Fed. Supp. 481	22
Silas Mason Co. vs. Tax Comm., 58 Sup. Ct. Rep. 233	18, 20
South Carolina vs. U. S., 199 U. S. 437	24
Standard Oil Co. vs. California, 291 U. S. 242	16
Standard Oil Co. vs. Johnson, 95 Cal. Dec. 229	20, 22
State Board of Equalization vs. Young's Market Co. 299 U. S. 59	7, 9
Statutes 1891, page 262	12
Statutes 1905, page 54	12
Statutes 1919, page 74	13, 20

INDEX TO AUTHORITIES CITED (continued)

	Page
Statutes 1935, Chap. 330	2
Statutes 1937, Chap. 758	2
9 Statutes 922	11
9 Statutes 452	12
13 Statutes 325	12
26 Statutes 313	8
26 Statutes 650	12
34 Statutes 831	13
41 Statutes 731	13, 21
Surplus Trading Co. vs. Cook, 281 U. S. 647	16
Twenty-first Amendment, Section 2	2
U. S. vs. Unzenta, 281 U. S. 138	16
27 U. S. C. A. 121	8
U. S. Constitution, Art. I, Sec. 8, Cl. 3	9
Yellowstone Park Transportation Co. vs. Gallatin Co., 31 Fed. (2d) 644	16
Yosemite Park & Curry Co. vs. Johnson, 95 Cal. Dec. 236	23

In the Supreme Court

OF THE

UNITED STATES.

OCTOBER TERM, 1937

No. 870

R. E. COLLINS, JOHN C. CORBETT and FRED B. STEWART et al.,
Appellants,

vs.

YOSEMITE PARK AND CURRY CO.,
Appellee.

APPELLANTS' OPENING BRIEF

A. STATEMENT OF FACTS

The Yosemite Park and Curry Company is a corporation operating in the Yosemite National Park in California. Incident to its business it sells alcoholic beverages to its patrons. The company imported alcoholic beverages to its place of business in the park from the adjoining State of Nevada, without first being licensed by the State of California so to do.

The State Board of Equalization of the State of California, the administrative agency of the state in

the enforcement of the State Alcoholic Beverage Control Act threatened to seize such imports under the provisions of sections 49 and 51 of the act on the grounds that the alcoholic beverages were not consigned to a licensed importer of alcoholic beverages (section 49) and that the containers of the alcoholic beverages did not bear the state excise tax stamps (section 51).

B. APPELLANTS' ARGUMENT

I. The Twenty-first Amendment Prohibits the Importations Here Involved Since They Are Contrary to the Laws of California

The Twenty-first Amendment to the Constitution of the United States provides, in section 2, as follows:

> "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

The law of California here involved is the State Alcoholic Beverage Control Act (Statutes 1935, Chapter 330, as amended by Statutes 1937, Chapter 758).

Section 49 of the Alcoholic Beverage Control Act provides as follows:

> "SEC. 49. Alcoholic beverages shall be brought into this State from without this State for delivery or use within the State only when such alcoholic beverages are consigned to a

licensed importer and only when consigned to the premises of such licensed importer or to the premises of a public warehouse licensed under this act. Alcoholic beverages which are consigned to a destination within this State shall be presumed to be for delivery or use within this State. Alcoholic beverages imported into this State contrary to the provisions hereof shall be seized by the board. Every person violating the provisions of this section shall be guilty of a misdemeanor."

Section 49.2 of the Alcoholic Beverage Control Act provides as follows:

"SEC. 49.2. Common or private carriers transporting alcoholic beverages into this State from without the State for delivery or use within this State must obtain the receipt of the licensed importer, distilled spirits manufacturer or distilled spirits manufacturer's agent for the alcoholic beverages so transported and delivered and, if the consignee refuses to give such receipt and show his license to the carrier, the carrier shall be relieved of all responsibility for delivering said alcoholic beverages. Where the consignee is not a licensed importer, distilled spirits manufacturer or distilled spirits manufacturer's agent or where the consignee refuses to give his receipt and show his license the carrier shall immediately notify the board at Sacramento giving full details as to the character of shipment, point of origin, destination and address of the consignor and consignee, and within ten days such alcoholic beverages

shall be delivered to the board and shall be forfeited to the State of California. If any alcoholic beverages seized under the preceding section or forfeited under this section are sold by or under the direction of the board the common carrier's unpaid freight and storage charges accruing on the shipments of such alcoholic beverages shall be satisfied out of the proceeds of any sale made by the State after deducting the cost of such sale and any excise taxes accruing thereon. Every person violating the provisions of this section shall be guilty of a misdemeanor."

The phrases "within the state" and "without the state" are defined in the act as follows:

"SEC. 2(w). '*Within this State*' means all territory within the boundaries of this State."

"SEC. 2(wl). '*Without the State*' means all territory without the boundaries of this State."

The boundaries of California are set forth in her Constitution, in Article XXI, as follows:

"SECTION 1. The boundary of the state of California shall be as follows: Commencing at the point of intersection of the forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred and twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line, in a southeasterly direction, to the River Colorado, at a point where it inter-

sects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence running west and along said boundary line to the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific coast to the forty-second degree of north latitude; thence on the line of said forty-second degree of north latitude to the place of beginning. Also, including all the islands, harbors, and bays along and adjacent to the coast."

In view of the statutory definitions of "within this state" and "without this state" there can be no doubt that the state legislature, in adopting the provisions of the Alcoholic Beverage Control Act, did everything possible to make plain its intention to bring under the control and regulation of the Alcoholic Beverage Control Act all intoxicating liquors coming within the physical boundaries of the state.

A similar statutory phrase, i. e., "within this state," was construed in the case of *Rainier National Park Co.* vs. *Martin,* 18 Fed. Supp. 481, where the Retail Sales Tax Act of the State of Washington was contested before a three-judge federal district court. The act had imposed a retail sales tax on all retail merchants engaging

in business "within this state." The Rainier National Park Company contested the applicability of the tax to its business done within the limits of the federally maintained and operated Rainier National Park, over which the State of Washington had granted the Federal Government exclusive jurisdiction. One contention made was that the park was not "within" the State of Washington. As to this the court said, at page 486:

> "As seen above, the retail sales tax is applicable to 'each retail sale in this state'; the business and occupation tax is levied upon persons engaged in the business of making sales at retail within this state, and upon every person engaging in any business activity other than or in addition to those enumerated 'within this state'; the highway transportation tax is levied on persons engaged in the business of highway transportation 'within this state'; and the public utility, light, and power tax is levied upon persons engaging in the businesses of water distribution, light and power, telephone and telegraph businesses 'within this state.'
>
> "The terms 'in this state' and 'within this state' as here used obviously mean within the geographical limits of the state. The park is within those limits, and the area comprising the park is not by such terms excluded from the other areas where the tax is obviously applicable."

This case was appealed to the United States Supreme Court and the judgment affirmed on Jan-

uary 17, 1938. (Case No. 334, October Term 1937; 58 Sup. Ct. Rep. 478.)

To the same effect in holding that federal reservations are territorially within a state are the following cases dealing with the converse situation, i. e., exports, where claims were unsuccessfully made that shipments from a state into a federal reservation, over which the state had ceded jurisdiction, should be considered as export shipments to points outside the boundaries of the state:

McKesson & Robbins, Inc. vs. *Collins*, 18 Cal. App. (2d) 648;
Grayburg Oil Co. vs. *State*, 3 S. W. (2d) 427;
Grayburg Oil Co. vs. *State*, 286 S. W. 489.

Indeed, the Twenty-first Amendment is so plain in its language that it needs no statutory construction. (*State Board* vs. *Young's Market Co.*, 299 U. S. 59.) Any construction other than that set forth heretofore would defeat the very purpose of the amendment (which was to return to the states sole jurisdiction over intoxicating liquors delivered or used within their boundaries) by permitting wet areas to flourish in dry states and unlicensed areas to flourish in licensing states.

This Supreme Court, in the case of *State Board of Equalization* vs. *Young's Market Co., supra* (299 U. S. 59), held that the language of the Twenty-first Amendment was entirely clear and was apt to confer upon the state the power to forbid all

importations which did not comply with the conditions it prescribed (page 62).

Such is the case here. The state has prescribed the conditions upon which intoxicating liquors could be imported into the state. All importations not in accordance with those conditions were, and are, prohibited. The appellee has not complied with the conditions. Can anything be plainer, then, than the error of the lower court in this case?

a. Lower Court's Interpretation of the Effect of the Twenty-first Amendment Erroneous

The lower court in this case took the position that once the state relinquished jurisdiction over an area to the Federal Government, thereafter its power was gone absolutely and that the Twenty-first Amendment did not increase the jurisdiction of the state over such areas. That position, we believe, is fallacious.

Prior to the Wilson Act (26 Statutes 313; 27 U. S. C. A. 121), intoxicating liquors enjoyed the same rights of freedom from state interference while in interstate commerce as any other commodity. The state had no jurisdiction over such merchandise so long as it was in its original package and until sold by the importer. (*Brown* vs. *Maryland,* 25 U. S. 419; *Leisy* vs. *Hardin,* 135 U. S. 100.) So far as jurisdiction was concerned a state had no more jurisdiction over such com-

modities while in interstate commerce than it did over areas to which it had ceded jurisdiction to the Federal Government. Indeed, not as much, for as to interstate commerce the states, by constitutional provision (U. S. Constitution, Article I, section 8, clause 3), specifically gave up all jurisdiction over such commerce to the Federal Government, while as to national park areas there is nothing in the Constitution of the United States which sanctions a grant by the states to the Federal Government of exclusive jurisdiction over them.

And yet when the claim was made to this court that the Twenty-first Amendment did not remove intoxicating liquors from the protection of the commerce clause, this court promptly rejected the claim in view of the clear and unequivocal language of the Twenty-first Amendment (*State Board of Equalization* vs. *Young's Market Co., supra,* 299 U. S. 59). It follows from this decision that any other realm of jurisdiction formerly prohibited to a state through the protection of federal law have been removed by the provisions of the Twenty-first Amendment, which is latest in point of time.

In view of the provisions of the Twenty-first Amendment we believe that the lower court erroneously reached the conclusion it did in interfering, by injunction, with the officers of the State of California, and therefore its order and judgment should be reversed.

II. Furthermore, Even If the Twenty-first Amendment Is Totally Disregarded the Lower Court Erred Because the State Has Jurisdiction Over the Appellee Company Located in Yosemite National Park

While we believe that the Twenty-first Amendment fully supports our contention that the lower court erred in enjoining the state officials from interfering with the imports involved, nevertheless even without the benefit of the Twenty-first Amendment we shall proceed to show that the conclusion reached by the lower court was erroneous.

Our contention in this regard is that the State of California never had the power to cede, and the United States never had the power to accept, "exclusive" jurisdiction over Yosemite National Park which is located within the territorial boundaries of the State of California.

The question was presented but not answered in the case of *Arlington* vs. *Fant,* 278 U. S. 439, 454, this court there stating:

> "Counsel for the plaintiffs in the present case insist that the United States has the constitutional authority to maintain exclusive jurisdiction over the tract here in question as a national park, and that as the Government undoubtedly may use its control over all land within its exclusive jurisdiction to provide national parks, it may, where land is ceded by a State to the exclusive jurisdiction of the National Government, treat land thus ceded by the

State for such a purpose as it would treat national public land which had never come within the jurisdiction of the State; that as by virtue of Article 4 of the Constitution, Section 3, Congress has power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, it may treat land ceded to it by a State for the purposes of making a national park exactly as it would treat land which had always been within its exclusive jurisdiction and subject to its disposition for park purposes. This issue may in the future become a subject of constitutional controversy, because some twenty or more parks have been created by Congress, in a number of which exclusive jurisdiction over the land has been conferred by act of cession of the State. We do not find it necessary, however, now to examine this question."

The court recognized the importance of the question in that case. We proceed to point out how the question must be answered against any claim of exclusive jurisdiction.

Before proceeding further it is necessary at this point to give an historical review of the ownership and control over the lands embraced within Yosemite National Park. On February 2, 1848, the United States had ceded to it by the Republic of Mexico under the treaty of Guadalupe Hidalgo all of the lands embraced within the territorial limits of California (9 Statutes 922). When Cali-

fornia was admitted into the union on September 9, 1850, "on an equal footing with the original states in all respects whatever" no reservation of jurisdiction over these lands was made by the Federal Government (9 Statutes 452). On June 30, 1864, (13 Statutes 325) congress granted to the state for park purposes a portion of Yosemite National Park known as the "cleft" or "gorge." On October 1, 1890, (26 Statutes 650) congress set aside as a national forest and withdrew from occupancy and sale certain additional lands surrounding the "cleft" or "gorge."

In 1872 the California legislature (Political Code, Sec. 34; see Appendix "A") passed an act of cession relating to forts, magazines, etc., which corresponded to Article I, section 8, clause 17, of the United States Constitution. In 1891 the California legislature passed a general act of cession (Statutes 1891, page 262; see Appendix "B") which ceded to the United States exclusive jurisdiction over any parcel of land "as may have been or may be hereafter ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this state and the service of civil process therein."

Then, on March 3, 1905, (Statutes 1905, page 54; see Appendix "C") the State of California receded and regranted to the Federal Government

the "cleft" or "gorge" in trust for park purposes and on June 11, 1906, (34 Statutes 831; see Appendix "D") this recession was accepted by congress.

Thereafter, on April 15, 1919, (Statutes 1919, page 74; see Appendix "E") the State of California ceded exclusive jurisdiction over Yosemite National Park to the Federal Government reserving, among other things, "the right to tax persons and corporations, their franchises and property on the lands included in said parks." By Act of June 2, 1920, (41 Statutes 731; see Appendix "F") congress accepted this exclusive jurisdiction with the reservation above mentioned.

The only method provided by the Constitution of the United States by which the National Government may obtain exclusive jurisdiction over territory within a state is under the provisions of Article I, section 8, clause 17, as follows:

> "The Congress shall have Power * * * to exercise like authority (exclusive Legislation in all cases whatsoever) over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-yard, and other needful Buildings; * * *."

Under this clause the place must be for one of the enumerated purposes.

When the purpose for which the place was purchased is not a "fort, magazine, arsenal, dockyard

or other needful building" the United States can not obtain exclusive jurisdiction.

In the case of *New Orleans* vs. *United States,* 35 U. S. 660, the Supreme Court of the United States, at page 736, stated as follows:

> "Special provision is made in the constitution, for the cession of jurisdiction from the states over places where the federal government shall establish forts, or other military works. *And it is only in these places,* or in the territories of the United States, where it can exercise a general jurisdiction.
>
> The state of Louisiana was admitted into the Union, on the same footing as the original states. Her rights of sovereignty are the same, and by consequence, no jurisdiction of the federal government, either for purposes of police or otherwise, can be exercised over this public ground, which is not common to the United States. It belongs to the local authority to enforce the trust, and prevent what they shall deem a violation of it by the city authorities. All powers which properly appertain to sovereignty, which have not been delegated to the federal government, belong to the states and the people."

And in *Nikis* vs. *Com. of Va.,* 131 S. E. 236, the Supreme Court of Virginia stated, at page 239:

> "In order to be accorded immunity from state taxation, the accused must not only show that the land is acquired by the United States, but also that it is for one or more of the

purposes so clearly indicated in article 1, Sec. 8, cl. 17, of the Constitution. We are clear in our view that he is not entitled to any such immunity.

It is suggested in the brief for the accused that the sole test is whether or not the land has been acquired in the manner referred to in the clause cited; that is, over 'places purchased by the consent of the Legislature of the state in which the same shall be.' Clearly, however, this is not the sole test, because it is manifest that the land must also be acquired for one of the specific purposes which are indicated in the clause, namely, for a fort, magazine, arsenal, dockyard, or other needful building."

Certainly a national park is not a "fort, magazine, arsenal, dockyard or other needful building" and if not the Federal Government has no authority to assume exclusive jurisdiction over the park.

There are cases decided by this court which have held that where, as here, the lands were owned by the Federal Government prior to the admission of the state into the Union, exclusive jurisdiction may be granted by the state by an appropriate act of cession. But in each case the situation reveals one of the enumerated purposes.

In *Arlington Hotel Co.* vs. *Fant,* 278 U. S. 439, a military hospital was involved; in *Battle* vs. *U. S.,* 209 U. S. 36, a post office; while in *Benson* vs. *U. S.,* 146 U. S. 325, *Fort Leavenworth R. R. Co.* vs. *Lowe,* 114 U. S. 525, *Chicago, Rock Island*

& Pacific R. Co. vs. *McGlinn,* 114 U. S. 542, *Standard Oil Co.* vs. *California,* 291 U. S. 242, *Surplus Trading Co.* vs. *Cook,* 281 U. S. 647, *U. S.* vs. *Unzenta,* 281 U. S. 138, military reservations were involved. In *James* vs. *Dravo Construction Co.,* 58 Sup. Ct. Rep. 208, locks and dams for the improvement of navigation were held to be within the phrase "and other needful buildings."

The only case in which a nonenumerated purpose was involved was that of *Yellowstone Park Transportation Co.* vs. *Gallatin County,* 31 Fed. (2d) 644, certiorari denied 280 U. S. 555, but that case specifically omitted to pass upon the point now presented and did no more than rely on the then recent decision of *Arlington Hotel Co.* vs. *Fant. supra* (278 U. S. 439), where this court had gone to great pains to show that the case came within an enumerated purpose under Article I, section 8, clause 17, which was an entirely different situation.

It is needless to cite authorities upon the proposition that the Federal Government is a government of limited and delegated powers and its legislative powers must be found in the powers granted by the states to the Congress of the United States in Article I, section 8, of the United States Constitution. In clause 17 are specifically enumerated the purposes for which the Federal Government can obtain exclusive jurisdiction over lands lying within the states. As to purposes not

therein mentioned, congress has no authority to attempt such exclusive jurisdiction through congressional acts. It follows that the Congressional Acts of 1906 and 1920, in so far as they attempt to accept "exclusive" jurisdiction for park purposes are unauthorized, invalid and void.

No question is raised in this case as to the authority of congress to provide for national parks for such is not involved and to dispose of this case it is not necessary to pass upon that question.

III. Regardless of the Disposition of the Two Previous Points, the State Has Jurisdiction to Tax Sales by the Appellee Company of Alcoholic Beverages

As to the right of the state to tax the alcoholic beverages sold by the appellee, two things must be considered: (a) the provision in the Constitution of the State of California prohibiting the state from granting away its taxing power, and (b) the taxing reservations in the acts of cession.

a. Prohibition Against Granting Away Taxing Power

At the time the acts of cession were enacted by the legislature of California there was in existence section 6 of Article XIII of the State Constitution, adopted in 1879, which reads as follows:

> "The power of taxation shall never be surrendered of suspended by any grant or contract to which the state shall be a party."

As to acquisitions by the Federal Government it makes no difference whether the acquisition is

under Article I, section 8, clause 17, or not, the Federal Government is not entitled, as a matter of right, to exclusive jurisdiction. (*James* vs. *Dravo Construction Co.*, 58 Sup. Ct. Rep. 208.) The state may, in any case, attach reservations to its consent. The *James* case, *supra,* presented the situation of an acquisition under Article I, section 8, clause 17. Other cases hold to the same effect as to acquisitions, as here, not under Article I, section 8, clause 17. (*Fort Leavenworth R. R. Co.* vs. *Lowe*, 114 U. S. 525; *Silas Mason Co.* vs. *Tax Comm.*, 58 Sup. Ct. Rep. 233.)

Where the extent of jurisdiction in the Federal Government depends upon the grant of jurisdiction by the state, the Federal Government can obtain no greater jurisdiction than the state legislatures can validly grant. And in California, when the cession acts were passed, the legislature could not in any act passed by it, surrender or suspend to anyone, the Federal Government included, the power to tax. Any attempt to do so was violative of the constitutional provision above quoted. The Federal Government could, and did, gain nothing through any such invalid act.

So as to the matter of taxation, because of this state constitutional restriction the State of California never did, or could, validly surrender or suspend its right to tax within the boundaries of the Yosemite National Park, and the appellee is in

no position to claim immunity from taxation because of such constitutional restriction.

And since the alcoholic beverages here imported did not bear the state excise tax stamps the state had the right to seize them under the provisions of section 51 of the Alcoholic Beverage Control Act, which provides as follows:

> "SEC. 51. The board shall also have the power to seize the following alcoholic beverages: (3) Distilled spirits except (a) distilled spirits located upon premises for which licenses authorizing the sale of such distilled spirits have been issued; (b) distilled spirits consigned to and in the course of transportation to a licensee holding licenses authorizing the sale of such distilled spirits or for delivery without this State; (c) distilled spirits the containers of which bear the stamps herein required to be attached thereto; (d) alcohol or distilled spirits in the possession of a person who has lawfully purchased the same for use in the trades, professions or industries and not for beverage use."

and the lower court in enjoining the seizure on this ground erred.

b. Taxing Reservations in Acts of Cession and Acceptance

Assuming for the sake of further argument that the constitutional provision of California did not prevent the state legislature from surrendering or suspending the taxing power over the Yosemite National Park, then, nevertheless, the appellee com-

pany is still subject to taxation under the Alcoholic Beverage Control Act because the right to levy such taxes was expressly reserved in the acts of cession and acceptance.

The California Supreme Court has already held that as between the California Act of 1891 and the California Act of 1919, the latter act, taken in connection with the 1920 congressional act of acceptance constitutes the latest definition and recognition of the rights and powers of the respective sovereign parties.

Standard Oil Company vs. *Johnson,* __ Cal. __; 95 Cal. Dec. 229 (See Appendix "G").

The authorities are uniform to the effect that where lands are acquired by the Federal Government in ways other than under Article I, section 8, clause 17, the state in granting exclusive jurisdiction may reserve the right to tax and that such a reservation will be upheld when not inconsistent with the purpose of the acquisition.

Fort Leavenworth R. R. Co. vs. *Lowe,* 114 U. S. 525, 541;

James vs. *Dravo Construction Co.,* 58 Sup Ct. Rep. 208, 213;

Silas Mason Co. vs. *Tax Comm.*, 58 Sup. Ct. Rep. 233.

In the instant case the State of California, in its act of cession (Statutes 1919, page 74), provided as follows:

"* * * saving further, to the said state the right to tax persons and corporation, their franchises and property on the lands included in said parks."

The act of congress (41 Statutes 731) accepting this cession of jurisdiction, provided that this taxing power should be reserved to the state, the exact language of the act of cession (quoted above) being employed in the act of acceptance.

Is the tax imposed by the Alcoholic Beverage Control Act within the statutory reservation? This question must be answered in the affirmative. The tax is an excise tax of eighty cents a gallon on the sale of distilled spirits (Sec. 24) and two cents a gallon on the sale of beer and wine (Sec. 23).

In *Rainier National Park Company* vs. *Henneford,* 182 Wash. 159, 45 Pac. (2d) 617, a company operating in a national park sought to contest the validity of an excise tax levied by the State of Washington on businesses and occupations. The court held that although the tax was an excise tax and not a property tax, nevertheless the tax was valid. Certiorari was denied by this court in 296 U. S. 647. In this connection it will be remembered that the Washington act of cession contained a reservation of taxation in language similar to the California statute. (See: statute set forth in *Rainier National Park Co.* vs. *Martin,* 18 Fed. Supp. 481.)

In *Rainier National Park Co.* vs. *Martin,* 18 Fed. Supp. 481; the same conclusion was reached where it was held that within the right reserved to tax "persons and corporations, their franchises and property" were included excise taxes consisting of taxes on retail sales, taxes on businesses and occupations, taxes on highway transportation and taxes on public utilities. And this case was affirmed on appeal by this court in 58 Sup. Ct. Rep. 478.

And in *Standard Oil Co.* vs. *Johnson,* -- Cal. --, 95 Cal. Dec. 229, (See: Appendix "G"), it was held that within the very reservations here involved in the California act of cession relating to Yosemite National Park were included the excise tax on retail sales and the excise tax on the sale of Motor Vehicle Fuel.

These authorities definitely hold that a tax based on sales of personal property, although an excise tax, is within the reserved taxing power under a reservation to tax "persons and corporations, their franchises and property."

One question remains: does the fact that the corporation involved operates within the national park under a contract with the Federal Government exempt it from state taxation? This question must be answered in the negative.

In the cases of *Rainier National Park Company* vs. *Henneford,* 182 Wash. 159; 45 Pac. (2d) 617; certiorari denied, 296 U. S. 647; and *Rainier Na-*

tional Park Co. vs. *Martin,* 18 Fed. Supp. 481, affirmed in 58 Sup. Ct. Rep. 478, the plaintiff company sought to avoid the taxing statutes of the State of Washington by claiming that such a tax would be a burden upon the Federal Government by taxing a federal instrumentality. The contention was rejected in both cases.

The same claim was made by the appellee corporation herein before the Supreme Court of California in reference to the retail sales tax of California and the contention rejected. (*Yosemite Park & Curry Co.* vs. *Johnson,* __ Cal. __; 95 Cal. Dec. 236; See Appendix "H".) In disposing of the contention the Supreme Court of California said:

> "The plaintiff is a private corporation authorized to do business in this state. It operates as United States government lessee and concessioner in Yosemite Valley under a contract with the secretary of the interior. The additional contention herein that as such lessee and concessioner it is not subject to the reserved taxing power of the state has been answered adversely in the case of *Rainier National Park Co.* v. *Henneford,* 182 Wash. 159, 45 Pac. (2d) 617 (petition for writ of certiorari denied, 296 U. S. 647). In that case a similar lessee and concessioner operating in a national park was held subject to taxation by the state. (See also, *Silas Mason Co.* v. *State Tax Commission,* 188 Wash. 98, 61 Pac. (2d) 1269 (affirmed 58 Sup. Ct. Rep. 233), and *Rainier National Park* v.

Martin, 18 Fed. Supp. 481, affirmed 58 Sup. Ct. Rep. 478). We find no merit in the contention. Nor may it be said that the exercise of the reserved taxing power will hinder the Yosemite Park and Curry Company in the efficient performance of its contract with the federal government."

Moreover, even if the concessionnaire were a government instrumentality, there is no reason why the state could not impose a liquor tax upon it. In engaging in the sale of intoxicating liquors the Federal Government would not be engaging in the performance of any federal function. It would be engaging in a proprietary function and as such it could be taxed by the state.

The Federal Government has already imposed its liquor taxes upon states which are operating state stores.

South Carolina vs. *U. S.,* 199 U. S. 437;
Ohio vs. *Helvering,* 292 U. S. 360;
Com. vs. *Kyle,* 79 Fed. (2d) 520 (cert. den., 56 Sup. Ct. Rep. 442).

If the Federal Government can impose taxes on states which are engaged in the sale of intoxicating liquors without violating the provision against the taxation of a state instrumentality, then, conversely, the state may likewise tax a federal instrumentality which is engaging in the sale of intoxicating liquors.

c. The Liquor Tax Is Not a Regulatory Act

A statement is made in the opinion of the lower court—a statement which indicates that the conclusion reached by that court upon the question of taxation was based on a misconception of the kind of tax imposed by the Alcoholic Beverage Control Act. On the last page of the opinion it is stated:

> "The California enactment is chiefly regulatory in nature * * *."

Such is not the case. While the act does license and regulate the traffic in alcoholic beverages it is also a large source of revenue for the general fund of the state. Eighty cents a gallon is levied against the distilled spirits sold (section 24); two cents a gallon against all beer and wine sold (section 23). These taxes produced for the state the following revenue:

1933	$633,013.72
1934	1,510,354.92
1935	5,819,035.73
1936	9,489,659.38
1937	10,272,818.80

NOTE.—The tax on distilled spirits became effective July 1, 1935.

Certainly such a huge return from taxes does not indicate the presence of a regulatory measure. In addition to the above taxes fees for licenses totalled $21,983,987.91 for the period 1933–1937.

Unquestionably the lower court was wrong in passing lightly over the taxing provisions of the

Alcoholic Beverage Control Act and referring to it as chiefly a regulatory measure.

So in this case, the sales of alcoholic beverages made by the appellee company are subject to the excise taxes provided for in the Alcoholic Beverage Control Act because (1) the state legislature was prohibited from surrendering or suspending its taxing power, and (2) the acts of cession and acceptance reserved to the state the right to levy upon and collect from the appellee company the type of tax imposed by the Alcoholic Beverage Control Act.

C. CONCLUSION

For the foregoing reasons the judgment of the District Court should be reversed with directions to dismiss the bill of complaint of the appellee.

Respectfully submitted.

U. S. WEBB,
Attorney General of
the State of California,
SEIBERT L. SEFTON,
Deputy Attorney General,
Attorneys for Appellants.

APPENDIX A
Political Code—Section 34

"The legislature consents to the purchase or condemnation by the United States of any tract of land within this state for the purpose of erecting forts, magazines, arsenals, dockyards and other needful buildings, upon the express condition that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state, against any person charged with crime, may be served and executed thereon in the same mode and manner and by the same officers as if the purchase or condemnation had not been made."

APPENDIX B
Statutes 1891, page 262
CHAPTER CLXXXI.

An act ceding to the United States of America jurisdiction over lands in this State ceded to the United States.

(Approved March 31, 1891.)

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may be hereafter ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this State and the service of civil process therein.

SEC. 2. This act shall take effect immediately.

APPENDIX C

Statutes and Amendments to the Codes—California 1905

"CHAPTER LX.

An act to recede and regrant unto the United States of America, the 'Yosemite Valley,' and the land embracing the 'Mariposa Big Tree Grove.'

(Approved March 3, 1905.)

The people of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The State of California does hereby recede and regrant unto the United States of America, the 'Cleft' or 'Gorge' in the granite peak of the Sierra Nevada mountains, situated in the county of Mariposa, State of California, and the headwaters of the Merced river, and known as the Yosemite Valley, with its branches or spurs, granted unto the State of California in trust for public use, resort and recreation by the act of congress entitled 'An act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the 'Mariposa Big Tree Grove,' approved June 30th, 1864; and the State of California does hereby relinquish unto the United States of America and resign the trusts created and granted by the said act of congress.

SEC. 2. The State of California does hereby recede and regrant unto the United States of America, the tracts embracing what is known as the 'Mariposa Big Tree Grove,' granted unto the State of California in trust for public use, resort and recreation by the act of congress referred to

in section 1 of this act and the State of California does hereby relinquish unto the United States of America and resign the trusts created and granted by the said act of congress.

SEC. 3. This act shall take effect from and after acceptance by the United States of America of the recessions and regrants herein made, thereby forever releasing the State of California from further cost of maintaining the said premises, the same to be held for all time by the United States of America for public use, resort and recreation, and imposing on the United States of America the cost of maintaining the same as a national park. *Provided, however,* that the recession and regrant hereby made shall not affect vested rights and interests of third persons."

APPENDIX D

Section 1 of the Act of June 11, 1906 (34 Statutes 831)

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the recession and regranting unto the United States by the State of California of the cleft or gorge in the granite peak of the Sierra Nevada Mountains, situated in the county of Mariposa, State of California, and the headwaters of the Merced River, and known as the Yosemite Valley, with its branches or spurs, granted unto the State of California in trust for public use, resort, and recreation by the Act of Congress entitled "An Act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the Mariposa Big Tree Grove,"

approved June thirtieth, eighteen hundred and sixty-four (Thirteenth Statutes, page three hundred and twenty-five), as well as the tracts embracing what is known as the "Mariposa Big Tree Grove," likewise granted unto the State of California by the aforesaid Act of Congress, is hereby ratified and accepted, and the tracts of lands embracing the Yosemite Valley and the Mariposa Big Tree Grove, as described in the Act of Congress approved June thirtieth, eighteen hundred and sixty-four, together with that part of fractional sections five and six, township five south, range twenty-two east, Mount Diablo meridian, California, lying south of the South Fork of Merced River and almost wholly between the Mariposa Big Tree Grove and the present south boundary of the Yosemite National Park, be, and the same are hereby, reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States and set apart as reserved forest lands, subject to all the limitations, conditions, and provisions of the Act of Congress approved October first, eighteen hundred and ninety, entitled "An Act to set apart certain tracts of land in the State of California as forest reservations," as well as the limitations, conditions, and provisions of the Act of Congress approved February seventh, nineteen hundred and five, entitled "An Act to exclude from the Yosemite National Park, California, certain lands therein described, and to attach and include the said lands in the Sierra Forest Reserve," and shall hereafter form a part of the Yosemite National Park.

APPENDIX E

Statutes 1919, page 74.

CHAPTER 51.

An act to cede to the United States exclusive jurisdiction over Yosemite national park, Sequoia national park, and General Grant national park in the State of California.

(Approved April 15, 1919. In effect July 22, 1919.)

The people of the State of California do enact as follows:

SECTION 1. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as "Yosemite national park," "Sequoia national park," and "General Grant national park" respectively; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situate; provided,

however, that jurisdiction shall not vest until the United States through the proper officer notifies the State of California that they assume police jurisdiction over said parks.

APPENDIX F

Section 1 of the Act of June 2, 1920 (41 Statutes 731)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of the Legislature of the State of California (approved April 15, 1919), ceding to the United States exclusive jurisdiction over the territory embraced and included within the Yosemite National Park, Sequoia National Park, and General Grant National Park, respectively, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving however, to the said State of California the right to serve civil or criminal process within the limits of the aforesaid parks or either of them in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said parks; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situated. All the laws applicable to places under sole and exclusive jurisdiction of the United States shall

have force and effect in said parks or either of them. All fugitives from justice taking refuge in said parks, or either of them, shall be subject to the same laws as refugees from justice found in the State of California.

APPENDIX G

Sac. Nos. 5144, 5145. In Bank. February 25, 1938

Standard Oil Company of California (a Corporation Plaintiff and Appellant, v. Charles G. Johnson, as Treasurer of the State of California, Defendant and Respondent.

Appeals by plaintiff from judgments of the Superior Court of Sacramento County, Dal M. Lemmon, Judge, in actions to recover gasoline taxes paid under protest. *Affirmed.*

For Appellant—Pillsbury, Madison & Sutro.

For Respondent—U. S. Webb, Attorney General; W. H. Linney, Deputy Attorney General; James J. Arditto, Deputy Attorney General.

BY THE COURT.

The appeals in several actions brought by the plaintiff, Standard Oil Company of California, involve the question whether sales of gasoline in certain national parks are subject to the tax imposed by the Motor Vehicle Fuel License Tax Act (Stats. 1923, p. 577, as amended Stats. 1933, p. 1643). These appeals have been consolidated for determination. A related question is presented in the companion case of *Yosemite Park and Curry Co.* v. *Johnson,* wherein the Sales Tax Act (Stats. 1933, p. 2599, as amended), is involved. The determination herein will control the disposition of

the same questions presented in the *Yosemite Park and Curry Company* case, and the discussion herein with reference to the effect of the retail sales tax will be deemed sufficient for that purpose.

Standard Oil Company by its several actions sought to recover gasoline taxes paid under protest, which were imposed for the distribution and sale of gasoline within the boundaries of Yosemite national park, Sequoia national park and General Grant national park, located within the territorial limits of California.

The plaintiff is a private corporation authorized to do business in California. The problem revolves around the question whether the State of California ceded exclusive jurisdiction to the United States government of the areas comprising the various national parks in such a way as to divert itself of jurisdiction to impose and collect the taxes so paid under protest.

Demurrers to the various complaints were sustained and judgment entered for the defendants. The plaintiff appeals.

[1] On February 2, 1848, by the treaty of Guadalupe Hidalgo, the Republic of Mexico ceded to the United States government all the lands within the territorial limits of California. The United States thereby became vested with the title to all such lands not held in private ownership. (*Thompson* v. *Doaksum*, 68 Cal. 593, 596.) The areas now comprising the national parks hereinbefore mentioned were therefore then public lands. The United States retained title to these public lands upon the admission of California to statehood. (9 Stats. 452.)

On June 30, 1864 (13 Stats. 325), that portion of Yosemite national park designated in the act as the "'Cleft' or 'Gorge' in the Granite Peak of the Sierra Nevada mountains situated in the county of Mariposa * * * and the headwaters of the Merced River, and known as the Yo-Semite valley," was granted to the State of California upon the express condition that the "premises shall be held for public use, resort, and recreation." By the same act "Mariposa Big Tree Grove," comprising four sections of land, was granted upon like conditions.

On October 1, 1890 (26 Stats. 650), congress set apart as a national forest and withdrew from sale and occupancy certain tracts of the public lands in the Sierra Nevada, but expressly excepted therefrom the Yosemite valley and Mariposa big tree grove theretofore granted to California. A portion of those reserves surrounding Yosemite valley was later, on February 7, 1905, designated as "Yosemite National Park." (33 Stats. 702.)

On March 3, 1905 (Stats. 1905, p. 54), California receded and regranted to the United States without reservation the "Cleft" or "Gorge" known as Yosemite valley, and the "Mariposa Big Tree Grove," and resigned the trusts created and granted by the act of congress of June 30, 1864, upon condition that the lands be held by the United States for public use, resort and recreation. This recession was accepted by congress on June 11, 1906 (34 Stats. 831), *and the areas by the same act were included as part of Yosemite National Park.*

The area comprising Sequoia national park was withdrawn from occupancy and sale and dedicated as a public park on September 24, 1890 (26 Stats. 478). An act of congress (26 Stats. 651), enacted on October 1, 1890, established General Grant national park.

At the time of the recession to the United States of the Yosemite valley and Mariposa big tree grove there was in effect a statute passed by the legislature of California in 1891 (Stats. 1891, p. 262), providing: "The State of California hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may be hereafter ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this state and the service of civil process therein."

The plaintiff relies upon the foregoing quoted statute, together with the act of recession of 1905, as supporting its claim that the State of California by the regrant had relinquished exclusive jurisdiction to the United States in the area known as Yosemite valley, wherein occurred most of the transactions upon which the taxes involved were imposed and collected.

The defendant, however, contends that the act of the California legislature approved April 15, 1919 (Stats. 1919, p. 74), ceding to the national government jurisdiction over Yosemite national park, Sequoia national park and General Grant national park, and the act of acceptance by congress on June 2, 1920 (41 Stats. 731), constitute

the basis upon which depend the rights of the state herein.

The legislative act of 1919 in its pertinent parts provides: "Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as 'Yosemite national park, Sequoia national park' and 'General Grant national park' respectively; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks * * * and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks * * *."

The 1920 Act of Acceptance reads: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of the legislature of the State of California (approved April 15, 1919), ceding to the United States exclusive jurisdiction over the territory embraced and included within the Yosemite National Park, Sequoia National Park, and General Grant National Park respectively, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving, however, to the said State of California, the right to serve civil or criminal process within the limits of the aforesaid parks * * * and saving fur-

ther to the said State the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks. * * *"

The contention of the plaintiff is that the state, having by the 1905 act of recession, granted exclusive jurisdiction of Yosemite valley to the United States, had nothing more to grant, and that the attempted cession of 1919 with reservations was an empty gesture. Answering this argument the defendant asserts that the 1905 act of recession did not vest exclusive jurisdiction in the United States, because, so he claims, such exclusive jurisdiction can be acquired only pursuant to clause 17, section 8, article I of the Constitution of the United States, which provides: "Congress shall have power to exercise exclusive jurisdiction in all cases whatsoever * * * over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings." In this connection reliance is also placed on section 6 of article XIII of the state Constitution, providing that the power of taxation shall never be surrendered or suspended by any grant or contract to which the state shall be a party.

However, we deem it unnecessary to pursue the inquiry into the constitutional question whether exclusive jurisdiction may be ceded to or acquired by the United States of lands within the territorial limits of a state solely for recreational and park purposes. We need note only that the history

and reasons for the vesting in the United States of the power to hold exclusive jurisdiction for the enumerated purposes, and many aspects of the controversial question relating to acquisition of exclusive jurisdiction for other purposes, have been stated in the following cases, among others, and do not require repetition here: *Fort Leavenworth R. R. Co.* v. *Lowe,* 114 U. S. 533; *Benson* v. *United States,* 146 U. S. 325; *Arlington Hotel* v. *Fant,* 278 U. S. 439; *Surplus Trading Co.* v. *Cook,* 281 U. S. 647; *In re Kelly,* 71 Fed. 545; *People* v. *Mouse,* 203 Cal. 782; *Silas Mason Co.* v. *State Tax Commission,* 188 Wash. 98, 61 Pac. (2d) 1269, (affirmed 58 Sup. Ct. Rep. 233); *Ryan* v. *State,* 188 *Wash.* 115, 61 Pac. (2d) 1276, (affirmed 58 Sup. Ct. Rep. 233.) Beginning at least as early as the decision in *Fort Leavenworth* v. *Lowe,* the Supreme Court of the United States recognized that exclusive jurisdiction could be acquired otherwise than by purchase with the consent of the state legislature, namely by cession, if for one or more of the purposes enumerated in the federal constitutional provision. (See *Ryan* v. *State, supra,* 61 Pac. (2d) at 1281.) But whether exclusive jurisdiction by any means may be acquired for a purpose not so enumerated, may still be an open question. (See *Arlington Hotel* v. *Fant,* 278 U. S. 439; *In re Kelly,* 71 Fed. 545.) The controversial point that the United States has the constitutional power to acquire exclusive jurisdiction within state territorial limits of an area devoted solely to park and recreational purposes was expressly left open in the Arlington Hotel case at page 454. So far as we know only two

cases have since attempted to resolve the question. In *Yellowstone Park Transportation Co.* v. *Gallatin County,* 31 Fed. (2d) 644, (petition for writ of certiorari denied, 280 U. S. 555), the court upheld the exclusive jurisdiction of lands ceded to the United States by the state of Montana for park purposes. The opinion shows that no concurrent jurisdiction or taxing power was reserved and that the express grant of powers to the United States was inconsistent with the reservation of any concurrent jurisdiction. The court supported its statement that "Cessions of exclusive jurisdiction such as that made by the Legislature of Montana, have been very common in the history of this country, and their effect is well settled", by the sin[illegible]e reference to the Arlington Hotel decision. [illegible] other case, *Yosemite Park and Curry Co.* v. *Collins,* (Circuit Court of Appeals, Southern Div., Northern Dist. of California, No. 4165) will be later discussed.

If the legislative act of recession of 1905, the congressional acceptance thereof, and the related acts prior to that time, were alone to be considered, it might be said that the constitutional question is squarely presented for determination. But as applied to all the territory named, we have a subsequent act of the legislature ceding title to the United States and expressly reserving, among other matters, the right to exercise in the territory ceded the power to tax persons and corporations, their franchises and property, together with a congressional acceptance in the same express terms. It is not a matter of necessary judicial inquiry as to what prompted these new acts of

cession and acceptance, covering public lands reserved to the United States when California was admitted as a state, and lands formerly receded to the United States without the special reservation. It may be that the respective legislative bodies deemed that, except for the purposes enumerated in clause 17, section 8 of article I of the Constitution, and in accord with the declaration of section 6, article XIII of the state Constitution, the power had not been constitutionally delegated to the United States to hold land for other purposes exclusive of any dominion of the state, and that they therefore desired to reframe their agreement to accord with the relative existing rights of the respective sovereigns. [2] In any event, there exists no constitutional inhibition upon the power of the state to cede or the right of the United States to receive limited jurisdiction of lands for the purposes and with the reservations stated in the grant herein. The only proper function of the court, therefore, is to recognize and give effect to the act of recession of 1919 and the act of acceptance of 1920 which appear to constitute a binding and valid definition and mutual recognition of the rights and powers of the respective sovereign parties. All other related considerations fade away when it is realized that, whatever had taken place before, the taxing power of the state was reserved by the act of 1919 and that congress, by the acceptance act of 1920, recognized the continuance of that power in the state. This express recognition by both sovereigns clearly establishes the existence of the right of the state to tax in the

areas designated in accordance with the power as reserved and defined in both acts.

It is not questioned that the United States may hold limited jurisdiction of land for other than the purposes enumerated in clause 17 of section 8 of article I of the Constitution; and the cases relied upon do not preclude a holding that the extent of such limited jurisdiction for other than the specified purposes may not be the subject of change by mutual agreement between the state and the United States.

In *Fort Leavenworth R. R. Co.* v. *Lowe, supra,* at page 539, we find this statement: "It not being a case where exclusive legislative authority is vested by the Constitution of the United States, that cession could be accompanied with such conditions as the State might see fit to annex not inconsistent with the free and effective use of the fort as a military post." In that case the state by the act of cession of land to be used as a military post had reserved the power to tax railroad and other corporations. It was held that the reservation of the taxing power did not interfere with the use of the area as a military post and that there was no constitutional prohibition against the exercise of the reserved power. (See, also, *Chicago & Pacific Ry. Co.* v. *McGlinn,* 114 U. S. 542, 545-546; *United States* v. *Unzeuta,* 281 U. S. 138, 142.) The holding in the case of *United States* v. *Unzeuta, supra,* p. 143, that ceded jurisdiction which had been accepted could not be recaptured *by the action of the state alone* (which sought to amend the act of cession), is consistent with our conclusions herein. So, also, is the state-

ment in *In re Ladd,* 74 Fed. 31, at page 38 (wherein a state amendatory act was held to be ineffective to abrogate the existing contract, and there was no express acceptance), that a ceded exclusive jurisdiction continues until "terminated, either by the United States ceasing to own and occupy the reservation, or by the United States retroceding its exclusive jurisdiction to the state". Nor is *Standard Oil Co.* v. *California,* 291 U. S. 242, in conflict. There the tax on gasoline (Stats. 1923, p. 2599), was attempted to be laid on deliveries to the Post Exchange within the Presidio in San Francisco, a military reservation over which the United States was held to have been vested with exclusive jurisdiction under the constitutional section.

[3] We conclude that the legislative act of 1919 and the congressional acceptance of 1920 operate to reserve to the state the powers stated in the respective enactments.

[4] Another ground of resistance to the imposition of the sales and gasoline taxes in the national park areas is that such taxes, being in their nature excise taxes rather than taxes on persons or property, are not within the express reserved power.

The reserved taxing powers is couched in the following language: "and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks". It is asserted that inasmuch as a tax such as the retail sales tax or gasoline tax is in its nature an

excise tax (*People* v. *Ventura Refining Co.*, 204 Cal. 286, 294; *Roth Drug, Inc.* v. *Johnson*, 13 Cal. App. (2d) 720, 730), and being neither a tax on persons, such as a poll tax, nor a tax on tangible property, the power to impose it is not within the express reservation. The plaintiff misconceives the meaning and purpose of the phraseology employed. Contrary to its contention, the rule of strict construction does not necessarily apply. The pertinent considerations are stated in *Ryan* v. *State, supra,* 61 Pac. (2d) at 1283, as follows: "But, since self-preservation is the first law of nations and states, as well as of individuals, it will not be presumed, in the absence of clearly expressed intent, that the state has relinquished its sovereignty * * * The taxing power of the state is never presumed to have been relinquished unless the language in which the surrender is made is clear and unmistakable." And the following is also pertinent: "This is not a contest between the federal government and the state as to jurisdiction. It is a contest between the state, asserting its concurrent, or partial, jurisdiction, and an individual who asserts that exclusive jurisdiction rests in the federal government. So far from there being any contest as to jurisdiction between the two sovereign powers, the record discloses that they are working in harmony and accord, each exercising the field for which it is the better equipped and each, at the same time, recognizing the field of the other. The federal government, therefore, cannot possibly be prejudiced by the result of this action."

So, in line with the applicable principle, the reserved power must be construed most strongly in favor of the state in order to preserve its jurisdiction as to matters with which it is directly and immediately concerned, and as to which jurisdiction has not been ceded or granted to the federal government. We find support also in *Nikis* v. *Commonwealth*, 144 Va. 618, 131 S. E. 236, where it was said: "That the right of a state to tax the property of others located upon lands owned by the United States, although it cannot tax such lands, will not be held to be abandoned by the state, except for the most compelling reasons, is quite manifest from several decisions of the Supreme Court of the United States." It may be noted that it was there held that to be accorded immunity from state taxation it must be shown not only that the land was acquired by the United States, but also that it was acquired and used for one of the purposes indicated in article I, section 8, clause 7 of the Constitution.

A consideration of the taxing statutes shows that the tax is imposed respectively "upon retailers" (sec. 3, Stats. 1933, p. 2599, Stats. 1935, p. 1252) and upon "distributors" of gasoline, and it has so been held. (*Roth Drug Inc.* v. *Johnson, supra,* p. 736; *People* v. *Herbert's of Los Angeles, Inc.*, 3 Cal. App. (2d) 482; *People* v. *Ventura Refining Co., supra,* at page 294; *Rio Grande Oil Co.* v. *Los Angeles,* 6 Cal. App. (2d) 200, 201.) This language in the statutes will not, of course, be construed to disturb the classification of taxable subjects—persons, property and business (State Tax on Foreign-Held Bonds, 82 U. S. 300, 319; 26 R. C. L.,

p. 34; 1 Cooley on Taxation, p. 172). Neither does it mean that the excise taxes imposed should be considered as a tax "on persons" as a subject of taxation. The language of the statutes and the decisions still leaves the sales and gasoline taxes in the category of "excises" or tax on business. Nevertheless, as stated in vol. 1, Cooley on Taxation, pp. 68-69, taxes are contributions from persons or property, and "whether a tax be considered as imposed on the person or on the property, it is clear that all taxes are imposed either upon the one or the other". It seems obvious that the language of the reservation of the taxing power contemplated the reservation to the state of the general taxing power without any exceptions other than that necessarily arising from the ownership of the land and property by the United States government. There is no inconsistency created by the express inclusion in the reserved power of the "right to fix and collect license fees for fishing in said parks". Because of the nature of the privilege specially singled out, its express inclusion does not necessarily indicate that the taxing of all other privileges was intended to be excluded from the reservation. On the contrary it would seem that it was deemed necessary expressly to refer to that subject-matter, as otherwise it might be claimed that the cession carried the exclusive supervision and regulation of fishing privileges in the streams included in the ceded areas.

[5] There is no merit in the contention that the privilege of making sales in the ceded areas emanates solely from the national government. The mere fact that the taxing power for all general

purposes has been reserved by the state with the consent of congress is a recognition by the latter that the granting of such privileges emanates as well from the state.

The main contentions urged to establish the invalidity of the reserved taxing power as here exercised by the state are answered adversely to the claims in the recent case of *Rainier National Park Company* v. *Martin,* 18 Fed. Supp. 481 (affirmed 58 Sup. Ct. Rep. 478). There the power, exercised under a similar reservation, to impose on and collect a state retail sales tax from the Rainier National Park Company was held to be valid and was sustained.

In *Yosemite Park and Curry Co.* v. *Collins, supra,* it was held that the State of California had at one time ceded exclusive jurisdiction of Yosemite valley to the United States, that the subsequent legislation attempting to reserve the taxing power was ineffective, and therefore that the state had no reserved power to enforce in Yosemite valley the Alcoholic Beverage Control Act (1935 Stats. ch. 330). That act was there declared to be a complete liquor control measure, including provisions for license fees and excise taxes. Relative to the balance of Yosemite park the court held that the reservation of the taxing power did not include the power to impose a license tax. For the reasons hereinabove stated, we are led to disagree with those conclusions of the court in that case. Nor do we perceive that they were necessary to its decision. The result in that case, if it be correct, is adequately supported by the final ground stated by the court, as follows:

"While a revenue measure does not preclude the possibility of a clash between sovereignties, it does not invite one as a regulatory measure does. California has ceded the park to the United States, which has agreed to police it. Now by reason of the Alcoholic Beverage Control Act, California evidently claims the retention of her police power. Such a claim is violative of the police jurisdiction placed in the hands of the national government, and is void. Since the primary purpose of California's tax measure is the regulation of the intoxicating liquor business; since such regulation constitutes an exercise of the police power which is beyond the jurisdiction of the state, the measure cannot bestow upon California the power to collect license taxes from plaintiff for the importation and sale of liquors."

However the exercise of the reserved power by imposition of retail sales and gasoline taxes creates no interference with the exercise of the jurisdiction acquired by the United States pursuant to the grants herein involved.

The judgment in each case is affirmed.

APPENDIX H

Sac. No. 5176. In Bank. February 25, 1938

Yosemite Park and Curry Co. (a Corporation), Plaintiff and Appellant, v. Charles G. Johnson, as Treasurer of the State of California, Defendant and Respondent.

Appeal by plaintiff from a judgment of the Superior Court of Sacramento County, Dal M.

Lemmon, Judge, in an action to recover sales taxes paid under protest. *Affirmed.*

For Appellant—Brobeck, Phleger & Harrison; Felix T. Smith, Sigvald Nielson, of Counsel.

For Respondent—U. S. Webb, Attorney General; H. H. Linney, Deputy Attorney General; James J. Arditto, Deputy Attorney General.

BY THE COURT.

The plaintiff herein sued to recover sales taxes imposed on retail sales to visitors and others in Yosemite National Park, and paid by it under protest. A demurrer to the complaint was sustained and judgment entered for the defendant. The plaintiff appealed from the judgment.

Most of the questions raised are answered by the decision this day filed in the case of *Standard Oil Company of California* v. *Johnson,* Sac. Nos. 5144 and 5145, this day decided (ante, p. 229), and that decision is deemed controlling on the disposition of those questions herein.

[1] The plaintiff is a private corporation authorized to do business in this state. It operates as United States government lessee and concessioner in Yosemite Valley under a contract with the secretary of the interior. The additional contention herein that as such lessee and concessioner it is not subject to the reserved taxing power of the state has been answered adversely in the case of *Rainier National Park Co.* v. *Henneford,* 182 Wash. 159, 45 Pac. (2d) 617 (petition for writ of certiorari denied, 296 U. S. 647). In that case a similar lessee and concessioner operating in a national park was held subject to taxation by the

state. (See, also, *Silas Mason Co.* v. *State Tax Commission,* 188 Wash. 98, 61 Pac. (2d) 1269 (affirmed 58 Sup. Ct. Rep. 233), and *Rainier National Park* v. *Martin,* 18 Fed. Supp. 481, affirmed 58 Sup. Ct. Rep. 478). We find no merit in the contention. [2] Nor may it be said that the exercise of the reserved taxing power will hinder the Yosemite Park and Curry Company in the efficient performance of its contract with the federal government.

The judgment is affirmed.

BLANK

PAGE

BLANK

PAGE

FILE COPY

Office - Supreme Court, U. S.
FILED
APR 21 1938
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 870

R. E. COLLINS, JOHN C. CORBETT, and FRED B. STEWART, et al.,
Appellants,

vs.

YOSEMITE PARK AND CURRY CO.,
Appellee.

BRIEF FOR APPELLEE

HERMAN PHLEGER,
MAURICE E. HARRISON,
GREGORY A. HARRISON,
JAMES S. MOORE, JR.,
Attorneys for Appellee.

BROBECK, PHLEGER & HARRISON,
Of Counsel.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

BLANK

PAGE

Subject Index

	Page
THE ISSUE	1
STATEMENT OF THE CASE	4
History of Yosemite National Park and Statutes Involved	6
Constitutional Provisions Involved	9
The Alcoholic Beverage Control Act of California	10
ARGUMENT	13
Outline of Argument	13
I. The Twenty-First Amendment has no application in this case	13
II. The United States has constitutional power to exercise exclusive jurisdiction over areas devoted to National Park purposes	17
A. The California Constitution does not prevent cession of such jurisdiction	25
III. Enforcement of the California Alcoholic Beverage Control Act in Yosemite National Park is not within the power saved to California by the Act of June 2, 1920	26
A. The taxing features of the Alcoholic Beverage Control Act are applicable only to persons subject to the police power of California and cannot be separated from the regulatory features of the Act	28
IV. The United States has exclusive jurisdiction over Yosemite Valley, without any reservations	33
V. Imposition of the taxes levied by the Act is not within the scope of the power of taxation reserved by the Act of June 2, 1920	38
CONCLUSION	46
APPENDIX	follows 47

Table of Cases

	Pages
Alabama v. Georgia, 64 U. S. 505	23
American Insurance Co. v. 356 Bales of Cotton, 1 Peters 511	23
Arlington Hotel Co. v. Fant, 278 U. S. 439	20, 22, 27
Atkinson v. State Tax Commission, U. S. , 58 S. Ct. 419	33, 34
Barnsdall Refineries, Inc. v. Oklahoma Tax Commission, 41 Pac.(2d) 918	38
Benson v. United States, 146 U. S. 325	20, 22, 25
Chicago, R. I. & P. Ry. Co. v. McGlinn, 114 U. S. 542	19
City of Santa Barbara v. Stearns, 54 Cal. 495	40
Collins v. Yosemite, 20 Fed. Supp. 1009	1
Curtin v. Benson, 222 U. S. 78	34
Diefendorf v. Gallet, 10 Pac.(2d) 307	40
First National Bank v. Yankton, 101 U. S. 129	23
Foley v. Shriver, 81 Va. 568	16
Ft. Leavenworth R. R. Co. v. Lowe, 114 U. S. 525	18, 22, 24, 34
Grayburg Oil Co. v. State, 268 S. W. 489, 3 S. W.(2d) 427	16
Grayburg Oil Co. v. State of Texas, 278 U. S. 582	16
James v. Dravo Contracting Co., U. S. , 58 S. Ct. 208	18, 21, 22, 33
Knickerbocker Ice Co. v. Stewart, 253 U. S. 149	37
Ladd, In re, 74 Fed. 31	37
McKesson & Robbins, Inc. v. Collins, 18 Cal. App.(2d) 648	16
Mid-Northern Oil Co. v. Walker, 268 U. S. 45	43

Pages

New Orleans v. United States, 35 Pet. 660 21
Nikis v. Commonwealth, 131 S. E. 236 21

Oklahoma v. Barnsdall Refineries, Inc., 296 U. S. 521 38

People v. Mouse, 203 Cal. 782 20
Pollock v. Farmers L. & T. Co., 158 U. S. 601 41
Pope v. Blanton, 10 Fed. Supp. 18 24

Rainier National Park Co. v. Martin, 18 Fed. Supp. 481 ..... 16, 29, 43
Ryan v. State, 188 Wash. 115, 61 Pac.(2d) 1276, 1283 (affirmed U. S. , 58 S. Ct. 233) 36

St. Louis etc. Co. v. St. Louis, 249 U. S. 269 40
Shaffer v. Carter, 252 U. S. 37 40
Silas Mason Co. v. Tax Commission, U. S. , 58 S. Ct. 233 ..... 33, 34, 42
Standard Oil Co. v. California, 291 U. S. 242 ..... 14, 16, 21, 25, 27, 29, 34, 38, 44
Standard Oil Co. v. Johnson, 95 Cal. Dec. 229 ..... 34, 41
State v. Intoxicating Liquors, 6 Atl. 4 15
State v. Welsh, 251 N. W. 189 40
State Board of Equalization v. Young's Market Co., 299 U. S. 59 14
State Tax on Foreign-Held Bonds, 82 U. S. 300 40
Surplus Trading Co. v. Cook, 281 U. S. 647 ..... 20, 21, 22, 37

United States v. Dixon, 15 Peters 141 42
United States v. Unzeuta, 281 U. S. 138 ..... 20, 22

Western Union Telegraph Co. v. Chiles, 214 U. S. 274 15

Yosemite Park and Curry Co. v. Johnson, 95 Cal. Dec. 236 34
Yellowstone Park Transportation Co. v. Gallatin County, 31 Fed.(2d) 644 ..... 15, 18, 20, 25, 29, 34, 37

Table of Authorities Cited

Pages

UNITED STATES CONSTITUTION

Art. 1, Sec. 8(17) 9, 17, 18, 21, 23
Art. I, Sec. 10(3) 24
Art. IV, Sec. 3(1) 24
Art. IV, Sec. 3(2) 10

Twenty-First Amendment 10, 14

CALIFORNIA CONSTITUTION

Art. XIII, Sec. 6 ..... 9, 25

UNITED STATES STATUTES

9 Stats. 452 6
9 Stats. 922 6
13 Stats. 325 6
26 Stats. 650 7
33 Stats. 702 7
34 Stats 831 ..... 7, 33, 34
41 Stats. 731 ..... 8, 37, 39
50 Stats. 700 42

16 U. S. C., Sec. 41 and following 24
28 U. S. C., Sec. 380 (Sec. 266 Judicial Code) 43

CALIFORNIA STATUTES

Alcoholic Beverage Control Act (Cal. Stats. 1935, p. 1123; 1937 pp. 1934, 2126) 10, 27, 28-32, 41

Cal. Stats. 1891, p. 262 ..... 7, 33
Cal. Stats. 1897, p. 51 25
Cal. Stats. 1905, p. 54 ..... 7, 34
Cal. Stats. 1919, p. 74 ..... 7, 37
Cal. Stats. 1935, p. 1088 42
Cal. Stats. 1935, p. 1175 42

Political Code, Sec. 33 33

Pages

TEXT BOOKS

Beale on Conflict of Laws, Vol. 1, p. 519 40

Cooley on Taxation (4th Ed.), Volume 1, p. 172 40

26 *Ruling Case Law* 34 40

Sutherland, Statutory Construction, Sec. 328 43

BLANK

PAGE

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 870

R. E. COLLINS, JOHN C. CORBETT, and FRED B. STEWART, et al.,
Appellants,

vs.

YOSEMITE PARK AND CURRY CO.,
Appellee.

BRIEF FOR APPELLEE

THE ISSUE.

The essential issue in this case is whether the State of California has power to regulate the importation to and sale of alcoholic beverages within the Yosemite National Park. A series of statutes hereinafter referred to purport to cede from California to the United States exclusive juris-

All emphasis in quotations herein has been supplied.
References R. ..... are to the printed record on appeal.

diction over the Yosemite Valley,* and, as to the remainder of the Park, exclusive jurisdiction with reservation only of certain taxing powers. The State now contends that the United States could not constitutionally accept or exercise such exclusive jurisdiction and that the reserved taxing powers warrant the exercise by the State of a complete scheme of regulation of the traffic in alcoholic beverages. The lower court held that the United States may exercise exclusive or limited jurisdiction over national parks by voluntary cession from the state; that as to Yosemite Valley the jurisdiction was ceded without reservation, and that as to the balance of the Park the reserved taxing powers do not justify the enforcement within the Park of the regulatory powers of California. It also held that the Alcoholic Beverage Control Act of California is primarily a regulatory measure and its taxing features are inseparable therefrom.

The case does *not* involve any attempt on the part of appellee to escape regulation. Appellee operates within the Park under minute regulation of the Secretary of the Interior. It has long been the policy of the National Park Service to exclude from the Parks purely commercial enterprises and to insure adequate facilities and accommodations for visitors to the Park through concessionaires operating under the direct supervision and regulation of the federal authorities. Appellee operates its facilities under such a contract. It is confronted with conflicting regulations of the federal and state authorities, and the

*The term "Yosemite Valley" is used herein to refer to the area approximately four miles long and one mile wide described in the act of June 11, 1906, and commonly so designated. It is but a small part in area of Yosemite National Park, although the greater part of the Company's facilities exist within the Valley.

lower court properly held that the federal control of the Company's operations is paramount.

In the lower court the United States Attorney appeared *amicus curiae* in support of appellee's position.

Appellants are the members of the State Board of Equalization (herein called "the Board") and the Attorney General of California, and as such are charged with the enforcement of the Alcoholic Beverage Control Act of California (Cal. Stats., 1935, p. 1123, 1937, pp. 1934, 2126). They have appealed from a final decree of the District Court enjoining interference with plaintiff's possession and sale of alcoholic beverages in Yosemite National Park and interference with the importation of such beverages by plaintiff from points outside California into the Park.

The facts are not disputed, the case having been heard on the verified bill of complaint and defendants' motion to dismiss. The District Court rendered an opinion on hearing of the motion for an interlocutory injunction (20 Fed. Supp. 1009). The opinion appears at page 39 of the record.

Following the rendition of this opinion, the case was submitted for final decision and the Court made its findings of fact and conclusions of law (R. 31) and rendered a decree in accordance with the findings (R. 37). A direct appeal was taken to this Court under Section 266 of the Judicial Code (28 *U. S. C.*, Sec. 380).

STATEMENT OF THE CASE.

As shown by the complaint, plaintiff and appellee (hereinafter called "the Company") operates in Yosemite National Park certain hotels, camps, restaurants and stores, at which alcoholic beverages are sold, for consumption either on or off the premises. These operations are all conducted pursuant to a contract between the Company and the Secretary of the Interior of the United States (Ex. A to the complaint, R. 8). The Company is not engaged in the alcoholic beverage traffic, except in Yosemite National Park.

By the contract, the Company is obligated to provide all necessary accommodations and facilities for the entertainment and care of visitors to the Park, to supply additional facilities as deemed necessary by the Secretary, and to conduct its operations in the manner prescribed by the Secretary. The contract is dated October 1, 1932, and extends for a 20-year term, and the Company is authorized to occupy certain government lands in its performance, under restrictions therein stated. It is expressly provided (R. 15) that the Company will conduct its operations "in such manner, as the Secretary shall deem in every respect satisfactory and designed to promote the object for which the Park was created and established." The contract was accepted by the Company "with the knowledge that the park is intended by Congress to be preserved in its natural state, and that all private interests shall be excluded from it, except so far as may be necessary for the accommodation of the public" (R. 20), and the Company agrees faithfully to keep and observe "each and every provision in this contract or in any Act of Con-

gress or any rule, order or regulation concerning the park, its use, care, management or government, or anything in it" (R. 21).

The Company's charges are required to be approved by the Secretary, who has power to make alterations and modifications thereof (R. 21). The Company's records are required to be kept as desired by the Secretary (R. 21), and the Secretary is given final and conclusive power to determine whether there has been a failure or default on the part of the Company (R. 22). It is provided that the Company shall pay a fixed annual sum to the Secretary as compensation for the franchises and leases granted, and additional compensation based on a percentage of distributed net profits (over a 6% return on the investment) for the first 10 years and a percentage of earned net profits, whether or not distributed, after the 6% priority, during the second 10 years of the term. In determining the Company's profits the Secretary is empowered to determine the propriety of any item of expense incurred by the Company, and his decision thereon is final (R. 15-20).

As appears from the bill, the Secretary has directed the Company not to apply for or take the licenses provided by the Alcoholic Beverage Control Act of California in respect of its operations in the Park under the contract, and has informed the Company that any charges therefor or taxes levied pursuant to that act will not be allowed as operating expenses for purposes of the contract (R. 2, 4).

It further appears that defendants, believing that the Company's operations are subject to the act, have threatened to seize alcoholic beverages consigned to the Com-

pany in Yosemite National Park from points outside California while in transit through the State, and have threatened to enter the Park and there seize, under purported authority of the act, alcoholic beverages held by the Company for purposes of sale pursuant to its contract with the Secretary. Defendants threaten to invoke divers civil and criminal penalties for violation of the act, to require the keeping of accounts in the form prescribed by the Board, and otherwise to subject the Company to all the obligations of the act (R. 3). It further appears that such action on the part of the defendants would prevent performance by the Company of its contract with the Secretary (R. 3); that the property of the Company threatened to be seized is of the value of more than $3,000 (R. 2), and that the Company would suffer great and irreparable injury and has no adequate remedy at law (R. 5).

HISTORY OF YOSEMITE NATIONAL PARK AND STATUTES INVOLVED.

Prior to June 30, 1864, the entire area now comprising Yosemite National Park was public land of the United States, having been acquired by the treaty with Mexico (9 Stats. 922). When California was admitted to the Union (9 Stats. 452), political jurisdiction was not retained by the United States, so that the interest of the United States was merely proprietary. In 1864 (13 Stats. 325) title to the cleft or gorge known as Yosemite Valley and to the Mariposa Grove of Big Trees was transferred to the State of California in trust for park and recreational purposes, and this trust was administered by the State until 1906. There is no question that during this

period the entire area was subject to the political jurisdiction of California. Meanwhile, in 1890, a large area surrounding Yosemite Valley was withdrawn from entry and sale (26 Stats. 650), and in 1905 was designated Yosemite National Park (33 Stats. 702). The political jurisdiction of California in this area prior to 1919 is likewise unquestioned.

The Yosemite Valley and Mariposa Grove were regranted and receded to the United States by the California Legislature in 1905 (Cal. Stats. 1905, p. 54, set forth in Appendix, p. i). The regrant was accepted by Congress on June 11, 1906 (34 Stats. 831, set forth in Appendix, p. ii). These acts by themselves merely served to transfer title to the Valley and Grove, but there was then in effect, and still is, the act of the California Legislature (Cal. Stats. 1891, p. 262, set forth in Appendix, p. iv), which ceded exclusive jurisdiction to the United States over all lands which may have been or might thereafter be "ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof," subject to no reservations except the right to serve process.

The District Court held that when Yosemite Valley was regranted to and accepted by the United States, exclusive jurisdiction thereby became vested in the United States, by virtue of the effect of the 1891 statute, without reservation to California of any political jurisdiction other than the right to serve process within the Valley (R. 35, 42).

In 1919, the California Legislature passed a further statute (Cal. Stats. 1919, p. 74, set forth in Appendix p. iv), which ceded exclusive jurisdiction to the United

States over the Yosemite, Sequoia and General Grant Parks, saving the right to serve civil process and the right of residents to vote at state elections, and

> "* * * saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks."

By the act of June 2, 1920 (41 Stats. 731, Section 1 of which is set forth in Appendix, p. v), this offer was accepted by Congress, with a saving clause respecting taxation and fishing license fees in practically the words of the California statute.

The District Court held that this act applied only to the portion of Yosemite National Park outside Yosemite Valley and to the Sequoia and General Grant Parks therein referred to; that it was ineffective to diminish the exclusive jurisdiction over the Valley vested in the United States since 1906, and further, that the reserved jurisdiction of California under the 1920 act was insufficient to empower defendants to enforce within Yosemite National Park or in respect of imports thereto, the provisions of the Alcoholic Beverage Control Act of California, since the act was found to be primarily a police measure, enforcement of which was inconsistent with the jurisdiction ceded by the 1919 act. It was further found that the tax features of the Alcoholic Beverage Control Act were so inextricably interwoven with the regulatory features that they could not be enforced against the Company (R. 49).

CONSTITUTIONAL PROVISIONS INVOLVED.

Appellants, as we understand their claim, contend that the United States cannot constitutionally accept, and that California cannot constitutionally grant, exclusive political jurisdiction over areas used solely for national park purposes or for any other purpose than those specified in Article I, Section 8(17) of the United States Constitution, which reads as follows:

> "The Congress shall have power * * *
>
> "17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

Appellants further base their claim on the provisions of Article XIII, Section 6, of the California Constitution, which provides:

> "The power of taxation shall never be surrendered or superseded by any grant or contract to which the state shall be a party."

It is our position that neither provision relied on by appellants governs this case, and we find authority for the exercise of jurisdiction in respect of territory ceded to the Federal government, irrespective of the purpose for which ceded, not only in the inherent power of sovereignty,

but also in Article IV, Section 3(2) of the Constitution, which reads:

> "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."

Appellants also rely on the second section of the Twenty-first Amendment to the Constitution as revesting in California regulatory powers over traffic in alcoholic beverages, *irrespective of the effect of preceding cession* of jurisdiction. That section provides:

> "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

We contend that the Twenty-first Amendment operates only within the states and does not serve to revest in any state jurisdiction over any area ceded to the United States. The District Court so held in this case (R. 15).

THE ALCOHOLIC BEVERAGE CONTROL ACT OF CALIFORNIA.

The Alcoholic Beverage Control Act of California is a complete scheme of regulation of the liquor traffic administered by the State Board of Equalization. It defines and provides for the licensing of all types of dealers in alcoholic beverages and prohibits unlicensed persons from engaging in that traffic. The act prohibits the issuance of licenses for importation from other states except to li-

censed wholesalers and further prohibits the holding by wholesalers of retail licenses and vice versa.*

Minute regulations are prescribed as to the method of applying for and obtaining licenses; the suitability of the premises for such purposes being within the discretion of the Board; notice of application is required to be posted on the premises, and published. Licenses (except for the sale of beer) may not be issued outside of city limits for premises within 4 miles of camps of 25 or more men engaged in public works. The Board is empowered to prescribe accounting systems, to require the preservation of records, and to enter upon and examine the premises of licensees. The hours of sale and delivery are regulated, and large discretion is vested in the Board, including the power to fix the license fee for sale of distilled spirits for consumption on the premises.

Section 1 of the act provides that "this act shall be deemed an exercise of the police powers of the State * * *." The taxes imposed by the act are by its terms imposed upon licensees and on no other persons, since other persons are prohibited from engaging in any act for which a license is provided. Illustrative is the tax on distilled spirits, imposed by Section 24 of the Act, in the following terms:

> "An excise tax is hereby imposed upon all distilled spirits sold in this State by rectifiers or wholesalers thereof * * *."

---

*The text of the Alcoholic Beverage Control Act, as amended, is set forth in Exhibit A to the Jurisdictional Statement filed under Rule 12.

Section 33 provides the mechanics for the collection of this tax as follows:

> "Sec. 33. The tax imposed by section 24 of this act upon the sale of distilled spirits shall be collected from rectifiers and wholesalers of distilled spirits and payment of the tax shall be evidenced by stamps issued by the board to such rectifiers and wholesalers. In exceptional instances the board may sell such stamps to on- and off-sale distilled spirits licensees and other persons. No rectifier or wholesaler of distilled spirits, shall purchase distilled spirits excise stamps, except from the board or its duly authorized agents, nor dispose of such excise stamps except to on- or off-sale distilled spirits licensees when making sales of distilled spirits to such licensees as provided in section 32b."

Section 49 prohibits the bringing into the State of alcoholic beverages consigned to any person other than a licensed importer. Thus it appears that the taxing features of the Act are directed only to licensees, and the District Court found that they were inseparable from the regulatory provisions.

It should further be noted that Section 66 of the act provides that shipments of alcoholic beverages in transit through the State "for delivery or use without this State" are not subject to the provisions of the act.

ARGUMENT.

Outline of Argument.

I. The Twenty-first Amendment has no application in this case.

II. The United States has constitutional power to exercise exclusive jurisdiction over areas devoted to National Park purposes.

A. The California Constitution does not prevent cession of such jurisdiction.

III. Enforcement of the California Alcoholic Beverage Control Act in Yosemite National Park is not within the power saved to California by the Act of June 2, 1920.

A. The taxing features of the Alcoholic Beverage Control Act are applicable only to persons subject to the police power of California and cannot be separated from the regulatory features of the Act.

IV. The United States has exclusive jurisdiction over Yosemite Valley without any reservations.

V. Imposition of the taxes levied by the Act is not within the scope of the power of taxation reserved by the Act of June 2, 1920.

Specific reply to the contentions of appellants will be incorporated in our discussion of the foregoing points.

I. THE TWENTY-FIRST AMENDMENT HAS NO APPLICATION IN THIS CASE.

If Yosemite National Park is within the political jurisdiction of California, it is unnecessary for defendants to invoke the Twenty-first Amendment. If Yosemite National

Park is not within the political jurisdiction of California, the Twenty-first Amendment can have no application.

In *State Board of Equalization v. Young's Market Co.*, 299 U. S. 59, it was held that by virtue of the Twenty-first Amendment powers of the states were enlarged in dealing with intoxicating liquors, and many of the limitations in the Commerce Clause and the Fourteenth Amendment were rendered inapplicable to such traffic. There is nothing in that opinion, however, or in the language of the Twenty-first Amendment, that indicates any purpose of the amendment to alter the territorial limits of jurisdiction of the states. In discussing this point the court below aptly said:

> "We are not convinced that the Twenty-First Amendment serves to extend to states a grant of jurisdiction over territories which formerly they could not control. There is nothing in the Amendment to indicate such a purpose, any more than there is to indicate a granting of power to California to tax liquor sales and traffic in Oregon, which clearly would be absurd. Once a state relinquishes its jurisdiction over territory within its limits, its power over that particular land is gone absolutely." (R. 45)

The second paragraph of the Twenty-first Amendment provides:

> "The transportation or importation *into* any state, territory, or possession of the United States for delivery or use *therein* of intoxicating liquors in violation of the laws *thereof*, is hereby prohibited."

In *Standard Oil Co. v. California*, 291 U. S. 242, it was held that the cession by California of jurisdiction

over the Presidio in San Francisco, "put that area beyond the field of operation of her laws," and that "a state cannot legislate effectively concerning matters beyond her jurisdiction and within territory subject only to control by the United States."

In *Western Union Telegraph Co. v. Chiles*, 214 U. S. 274, a state statute imposing a penalty for non-delivery of a telegram was held inapplicable in respect of such failure occurring within a navy yard, the court saying that:

> "* * * the laws of the state * * * cannot be allowed any operation or effect within the limits of the yard."

In *Yellowstone Park Transportation Co. v. Gallatin County*, 31 Fed.(2d) 644, 645, it was said:

> "* * * after the date of cession, the ceded territory was as much without the jurisdiction of the state making the cession as was any other foreign territory, except in so far as jurisdiction was expressly reserved."

Fifty years ago the Supreme Court of Maine had occasion to consider a seizure of intoxicating liquors consigned to a Soldiers' Home, jurisdiction over which had been ceded to the United States. The state laws prohibited the importation "into" the state and the sale "in" the state of such liquor. The seizure was held to be unauthorized, the court saying, in *State v. Intoxicating Liquors*, 6 Atl. 4:

> "The laws of this state do not reach beyond its own territory, and liquors sold in the ceded territory cannot be considered sold in violation of the laws of this state."

In *Foley v. Shriver,* 81 Va. 568, it was held that lands purchased by the United States with the consent of the state are "no longer a part of the State of Virginia."

Rainier National Park Co. v. Martin, 18 Fed. Supp. 481, relied on by appellants (Br. p. 5), involved only the scope of the state taxing act and not the extent of the state's political jurisdiction. In the act of cession the state had reserved certain taxing powers. The tax act applied to transactions "in" or "within" the state, and it was held that the act did not intend to exclude from its scope transactions occurring within the park. The decision has no bearing on the meaning of the term "in" as used in the Twenty-first Amendment, where the extent of the political jurisdiction of the state is the determining factor.

McKesson & Robbins, Inc. v. Collins, 18 Cal. App.(2d) 648, cited by appellants (Br. p. 7) was concerned only with the definition of "export" with reference to shipments from California to ceded areas. It recognizes the exclusive jurisdiction of the United States in such areas, but holds that California wholesalers, as the law then stood, were not authorized to sell liquor to unlicensed persons doing business therein. It is a decision merely on what California wholesalers may do under the act, and has no bearing on the scope of the state's jurisdiction over transactions not involving its licensees. The *Grayburg Oil Co.* cases (cited by appellant in this same connection) were reversed by this Court in 278 U. S. 582. While the basis stated for reversal involved a different point, the conclusion of the Texas courts, in respect of the power of the state over sales made in areas subject to the exclusive jurisdiction of the United States, is directly opposed to the subsequent decision of this Court in *Standard Oil Co. v. California,* 291 U. S. 242.

If appellants' contention that the Twenty-first Amendment empowers the states to regulate the liquor traffic in areas previously ceded to the United States is valid, it is equally so as to areas subject to the terms of Article I, Section 8(17). It would follow that the liquor traffic in the District of Columbia is subject, not to the laws of Congress, but to the laws of Virginia and of Maryland. In Yellowstone National Park, the laws of Wyoming, Montana and Idaho would govern. Such an anomaly is not to be construed into an amendment which did not purport in any way to transfer jurisdiction from the United States.

It is obvious, therefore, that if the cession of jurisdiction over Yosemite National Park from California to the United States was effective, the Park thereafter ceased to be "in" California and that the laws of California ceased to be effective within the limits of the Park. Such being the case, the transportation is not "into" California, the delivery or use of liquor in the Park is not, as to California, for delivery or use "therein," nor is such delivery or use in "violation of the laws thereof." The Twenty-first Amendment, therefore, is clearly inapplicable.

II. THE UNITED STATES HAS CONSTITUTIONAL POWER TO EXERCISE EXCLUSIVE JURISDICTION OVER AREAS DEVOTED TO NATIONAL PARK PURPOSES.

Appellants contend that exclusive jurisdiction may be exercised by the United States only in respect of areas acquired or ceded for one or more of the purposes enumerated in Article I, Section 8(17) of the Constitution, viz., "forts, magazines, arsenals, dock-yards and other needful buildings." It is claimed that this section is the only section of the Constitution empowering the Federal

government to exercise exclusive jurisdiction over any area which has constituted a part of one of the states, and that the enumeration of specific purposes excludes all other purposes. No cases cited by appellants, or known to us, support this contention. The only case to our knowledge, prior to the decision of the lower court herein, expressly considering the point is *Yellowstone Park Transportation Co. v. Gallatin County,* 31 Fed.(2d) 644 (certiorari denied, 280 U. S. 555), where the right of the United States to exercise exclusive jurisdiction over national park areas was sustained.

It has been held that acquisition of jurisdiction under Article I, Section 8(17) is dependent upon three separate elements: (1), purchase, as distinguished from any other mode of acquisition; (2) consent of the legislature, and (3) use of the property for one of the purposes specified in the section. Without the coincidence of all three elements the constitutional section is held not to be applicable. Where, however, these elements coincide, the section becomes effective by its own force. (*Ft. Leavenworth R. R. Co. v. Lowe,* 114 U. S. 525, 538.) It is, however, competent for the State, in granting such consent, to impose conditions and limitations and reserve concurrent jurisdiction (*James v. Dravo Contracting Co.,* U. S. 58 S. Ct. 208).

It is now well established that exclusive jurisdiction may be held and exercised by the United States where the constitutional provision is inapplicable. The leading case is *Ft. Leavenworth R. R. Co. v. Lowe,* 114 U. S. 525, 541, where the court said:

> "In their relation to the general government, the States of the Union stand in a very different position

from that which they hold to foreign governments. Though the jurisdiction and authority of the general government are essentially different from those of the State, they are not those of a different country; and the two, the State and general government, may deal with each other in any way they may deem best to carry out the purposes of the Constitution. It is for the protection and interests of the States, their people and property, as well as for the protection and interests of the people generally of the United States, that forts, arsenals and other buildings for public uses are constructed within the States. As instrumentalities for the execution of the powers of the general government, they are, as already said, exempt from such control of the States as would defeat or impair their use for those purposes; and if, to their more effective use, a cession of legislative authority and political jurisdiction by the State would be desirable, we do not perceive any objection to its grant by the Legislature of the State. Such cession is really as much for the benefit of the State as it is for the benefit of the United States. It is necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired or reserved from sale. When they cease to be thus used, the jurisdiction reverts to the State."

In *Chicago, R. I. & P. Ry. Co. v. McGlinn*, 114 U. S. 542, decided on the same day, the court said, with reference to the decision in the *Ft. Leavenworth* case (p. 546):

"We also held, that it is competent for the Legislature of a State to cede exclusive jurisdiction over places needed by the general government in the execution of its powers, the use of the places being, in

fact, as much for the people of the State as for the people of the United States generally, and such jurisdiction necessarily ending when the places cease to be used for those purposes."

See also:

Benson v. United States, 146 U. S. 325;
Arlington Hotel Co. v. Fant, 278 U. S. 439;
United States v. Unzeuta, 281 U. S. 138;
Surplus Trading Co. v. Cook, 281 U. S. 647;
Standard Oil Co. v. California, 291 U. S. 242;
Yellowstone Park Transportation Co. v. Gallatin County, 31 Fed.(2d) 644.

In *People v. Mouse,* 203 Cal. 782, the Supreme Court of California, in upholding the exclusive jurisdiction of the United States over a Soldiers' Home, concluded that the home was a needful building within the meaning of the constitutional provision, but also sustained the exclusive jurisdiction on the further and independent ground, stated at page 786 of the report:

"But under the rule above announced we are not required to rely wholly upon the contention that this institution is a 'needful building,' for under the California statute above quoted, exclusive jurisdiction has been ceded to the United States over all grounds being used for military purposes. If then the institution in question, or the grounds in connection therewith, is being used either as a 'needful building' within the meaning of said section of the Constitution of the United States, or is being used for military purposes within the meaning of said act of the State of California, jurisdiction of the United States is exclusive."

The statute there relied on is the same act of 1897 involved in the *Standard Oil Co.* case, supra, and the jurisdiction ceded was sustained for other than the purposes enumerated in Section 8(17), since "military purposes" extend to far more than "forts, magazines and arsenals" and may not even require the presence of any needful buildings.

New Orleans v. United States, 10 Pet. 660, cited by appellants, holds only that the United States has no political jurisdiction over areas not reserved when a state is admitted to the Union. The statement quoted on page 14 of appellants' brief, is to be read in light of the question there under consideration.

Nikis v. Commonwealth, 131 S. E. 236 (cited on page 14 of appellants' brief) did not involve a cession of jurisdiction at all. The language of the Virginia court, quoted by appellants, was used solely with reference to jurisdiction sought to be sustained under Article I, Section 8(17) of the Constitution. So limited, it is in accord with the decisions of this court. It does not purport to consider the scope of jurisdiction in a case where the State has ceded to the United States exclusive or limited jurisdiction without reference to the constitutional provision. Moreover, the conclusion reached in that case is inconsistent with the holding of this Court in *James v. Dravo Contracting Co.,* U. S. 58 S. Ct. 208, as to the scope of the "needful buildings" clause, and with *Surplus Trading Co. v. Cook,* 281 U. S. 647, as to the immunity from state taxation of private property within a ceded area.

It has been held that jurisdiction acquired by cession from the State is not limited to those areas solely devoted to the purposes enumerated in the Constitution. In *Benson v. United States,* 146 U. S. 325, it was held that such jurisdiction existed in respect of a piece of farming land within the limits of an area ceded for military purposes. In *Arlington Hotel Co. v. Fant,* 278 U. S. 439, such exclusive jurisdiction was applied to a private hotel within a military reservation. The *Ft. Leavenworth* case, supra, involved a railroad right-of-way running through a military reservation, as did also *United States v. Unzeuta,* 281 U. S. 138. *Surplus Trading Co. v. Cook,* 281 U. S. 647, involved private property situated on a military reservation.

Moreover, the phrase "other needful buildings" has been given a liberal construction. It has been applied not only to post offices, soldiers' homes and similar structures, but also to locks and dams. In *James v. Dravo Contracting Co.,* U. S. 58 S. Ct. 208, the court said:

> "We construe the phrase 'other needful buildings' as embracing whatever structures are found to be necessary in the performance of the functions of the federal government."

Within the principle of these cases it would seem that jurisdiction over the national parks might be brought within the "other needful buildings" clause by reason of the existence of the various structures necessary for administration of the parks and accommodation of visitors thereto.

It is unnecessary, however, to go to this length since, it having been established beyond controversy that the

United States is not limited to the *methods* provided by Article I, Section 8(17) in acquiring exclusive jurisdiction, it follows that it is not limited to the *purposes* there enumerated. Application of that section has been held to depend both on methods and purposes, and since the method is not essential to the obtaining of exclusive jurisdiction neither is the purpose.

The acquisition of territory is an inherent power of sovereignty which, unless limited, must necessarily exist in a sovereign. From the inception of our national existence this attribute of sovereignty has been exercised and the national jurisdiction extended over areas acquired by discovery, by conquest and by purchase from other powers. None of that territory was acquired for any of the purposes enumerated in Article I, Section 8(17), and while the source of the power has been the subject of some academic debate, "possession of it is unquestioned" (*American Insurance Co. v. 356 Bales of Cotton*, 1 Peters 511), and that "it exists has always been conceded" (*First National Bank v. Yankton*, 101 U. S. 129).

Not only has such territory been acquired by discovery and from other nations, it has also been acquired by cession from the states. When the Constitution was adopted the federation held the Northwest Territory under cession from various of the original states. Following adoption of the Constitution, the territory now embraced in Tennessee, Mississippi and Alabama was acquired by cession from North Carolina and Georgia without any reference to the purposes enumerated in Section 8(17). See *Alabama v. Georgia*, 64 U. S. 505.

The Constitution recognized the inherent right of the states to acquire or cede territory by prohibiting compacts with another state or a foreign power without the consent of Congress (Art. I, Sec. 10(3)), and by limiting the formation of new states within the jurisdiction of other states and the union of states (Art. IV, Sec. 3(1)). Adjustments of boundaries between states, including mutual relinquishment of sovereignty, have been of frequent occurrence, and in at least one case territory was relinquished by a state to a foreign power with consent of Congress. (See *Ft. Leavenworth R. R. Co. v. Lowe,* 114 U. S. 525, 540.)

In *Pope v. Blanton,* 10 Fed. Supp. 18, the right of a state, with consent of Congress, to expand its boundaries was recognized.

The acquisition and relinquishment of territory being an inherent power of sovereignty, and no express prohibition being found in the Constitution against the exercise of that inherent power by cession from the state to the United States, it follows, as was said by the court in the *Ft. Leavenworth* case (at p. 541) that the State and general governments "may deal with each other in any way they may deem best to carry out the purposes of the Constitution."

The United States has accepted and exercised exclusive jurisdiction over national park areas since 1890. In respect of Yosemite National Park, it has prescribed a complete code of laws for its government (16 U. S. C., Sec. 41 and following). Whether or not the exercise of such power is referable to any of the purposes enumerated in Article I, Sec. 8(17), it is the exercise of an inherent power of sovereignty not prohibited by the Constitution and recognized

as proper in respect not only of discoveries and cession from foreign powers but in respect of cessions from the states themselves, since the inception of our present form of government. It is a political question as to which the court should follow the actions of the political departments (*Benson v. United States,* 146 U. S. 325). The decision of the lower court upholding the constitutionality of the exercise of such jurisdiction is, we submit, correct.

A. The California Constitution does not prevent cession of such jurisdiction.

Appellants rely on Article XIII, Section 6, of the California Constitution, which provides that "the power of taxation shall never be surrendered or suspended by any grant or contract to which the state shall be a party." This same constitutional provision was relied on by the State in petition for rehearing in this court in *Standard Oil Co. v. California,* 291 U. S. 242. Rehearing was denied by this Court. Jurisdiction over the Presidio at San Francisco, involved in the *Standard Oil Co.* case, rests upon an act of cession by the State (Cal. Stats. 1897, p. 51), and not upon Article I, Section 8(17) of the Constitution. The Presidio was not acquired by a purchase but, like Yosemite National Park, was owned by the United States at the time California was admitted to the Union.

An exactly comparable provision of the Montana constitution was invoked in *Yellowstone Park Transportation Co. v. Gallatin County,* 31 Fed.(2d) 644, in which case it was said, at page 645:

> "It is also contended that the act violates section 7 of article 12 of the state Constitution, which declares that the power to tax corporations or corporate prop-

erty shall never be relinquished or suspended. This contention is without merit. If exclusive jurisdiction over that portion of the park in the state of Montana was lawfully ceded to the United States, the cession inured to the benefit of both corporations and individuals, and the power to tax property in the ceded territory, whether corporate or individual, was at an end."

As said by the court below, "defendants have simply misapplied a general rule of state sovereignty to a situation in which the principal issue of territorial jurisdiction controls the right to tax (R. 43).

III. ENFORCEMENT OF THE CALIFORNIA ALCOHOLIC BEVERAGE CONTROL ACT IN YOSEMITE NATIONAL PARK IS NOT WITHIN THE POWER SAVED TO CALIFORNIA BY THE ACT OF JUNE 2, 1920.

Enforcement of the Alcoholic Beverage Control Act of California in Yosemite National Park or in respect of importation of such beverages into the Park from without the State of California is wholly inconsistent with the jurisdiction ceded in 1919, and accepted by the United States by the act of June 2, 1920. There is nothing in the saving clause of the act of cession which permits California to license, regulate and control the liquor traffic in the Park. Such regulation is in derogation of the "exclusive jurisdiction" of the United States.

Apart from the constitutional question discussed in subdivision II of this brief, it can hardly be contended that California has power to regulate the Company's activities in the Park in the manner threatened by appellants. Prior

to the inception of this controversy the Attorney General of California had ruled that the State had no power to require license of persons doing business in the parks and reservations over which jurisdiction had been ceded. The Alcoholic Beverage Control Act itself in Section 6(r) seemingly recognizes this lack of power by permitting licensed wholesalers, under rules of the Board, to sell to non-licensees whose place of business is within ceded areas. If a license is not required it would seem that other regulatory features also fall, either because applicable by their terms only to licensees, or because inconsistent with the ceded jurisdiction. The form of accounts, the hours of closing, the character of employees permitted, the conduct of business both as importer and retailer, are all of this nature.

The act itself (Sec. 1) states that it "shall be deemed an exercise of the police powers of the state." The lower court found that it was primarily regulatory and the California Supreme Court in *Standard Oil Co. v. Johnson,* 95 Cal. Dec. 229, seemingly recognized the validity of this ruling.*

The situation in this respect is precisely similar to *Arlington Hotel Co. v. Fant,* 278 U. S. 439, where state laws enacted after cession were held to be wholly ineffective in ceded territory. In *Standard Oil Co. v. California,* 291 U. S. 242, it was said that the cession "put that area beyond the field of operation of her laws" and that "a state cannot legislate effectively concerning matters beyond her jurisdiction and within territory subject only to control by the United States."

*See Appendix to Appellants' Brief at page 47.

A. The taxing features of the Alcoholic Beverage Control Act a applicable only to persons subject to the police power of Ca fornia and cannot be separated from the regulatory features the Act.

The lower court found that the taxing features of th Alcoholic Beverage Control Act could not be applied apa from the regulatory features, saying:

> "Since the primary purpose of California's ta measure is the regulation of the intoxicating liqu business; since such regulation constitutes an exe cise of the police power which is beyond the jurisdi tion of the State, the measure cannot bestow up California the power to collect license taxes fro plaintiff for the importation and sale of liquors. (R. 50)

It is manifest from the terms of the Act that this ruli is correct. In fact the Act does not even purport to t persons not subject to licensing requirements, and t extent of revenue derived therefrom is immaterial when t Act does not attempt to tax anyone other than licensee As previously mentioned, Section 6(r) of the Act reco nizes the absence of power in the State to require licens from those doing business within ceded areas. While r ferring to retailers, the principle is equally applicable importers. Hence the license fees specified by Section 5 the Act are clearly inapplicable to the Company.

The excise taxes are imposed by Sections 23 and 24 the Act, which respectively provide as follows:

> "Sec. 23. An excise tax is hereby imposed up all beer and wine *sold in this State by a manufactu or importer* * * *." (details of tax omitted)

"Sec. 24. An excise tax is hereby imposed upon all distilled spirits *sold in this State by rectifiers or wholesalers thereof* * * *." (details of tax omitted)

It will be noted that the taxes are levied upon beverages "sold in this State by a manufacturer or importer." As shown by the *Standard Oil Co.* case, supra, and by the other cases cited under Point II hereof, the act of cession removed the ceded territory from the jurisdiction of the state and "put that area beyond the field of operation of her laws." Hence the alcoholic beverages affected by this case are not sold in California and therefore are not within the terms of the act. The litigation is not concerned with beverages purchased from California dealers but relates entirely to such beverages purchased by the Company outside of California and imported directly to the national park. The Company sells such imported beverages only in retail channels. Licensed importers and wholesalers are permitted to sell only to retail licensees (Secs. 6(b), 6(f)) so it is evident that the Company's transactions are not of the character subjected to the tax.

Appellants (Brief, p. 5) rely on *Rainier National Park Co. v. Martin*, 18 Fed. Supp. 481, as holding that the term "in this State" embraces sales within Yosemite National Park. If the case so holds, it is inconsistent with the *Standard Oil Co.* case and others previously cited, where this Court has held that where jurisdiction is ceded to the United States it is effectively removed from the jurisdiction of the State. In *Yellowstone Park Transportation Co. v. Gallatin County*, 31 Fed.(2d) 644, 645, it was said:

"In other words, after the date of cession, the ceded territory was as much without the jurisdiction of the

state making the cession as was any other foreign territory, except in so far as jurisdiction was expressly reserved."

The language used by the court in the *Rainier* case was used solely with relation to the intent of the Washington Legislature to impose an excise tax in respect of transactions occurring within the Rainier National Park, as to which the State by the act of cession had reserved certain taxing powers. Nothing that was said by the court there could be construed to apply to the question of whether the national park was within the police jurisdiction of the State after the cession was accepted by the United States. The question here presented is whether the State competently may require the possession of a license by one importing liquor solely into the national park. Unless such a license is required the Act itself does not purport to tax the transaction.

The tax, moreover, is imposed only on beverages sold in the state *by manufacturer, importer, rectifier or wholesaler*. These terms must be read in conneetion with the statutory definitions (Sec. 2) and the privileges authorized to licensees (Sec. 6). Section 3, prohibiting the exercise of any privilege or performance of any act for which a license is provided unless the person holds the license, and making violation thereof a misdemeanor, further illustrates that the tax imposed by Sections 23 and 24 is imposed only on the transactions of licensed manufacturers, importers, rectifiers and wholesalers. Since no such transactions are interfered with by the injunction in this case, we are unable to see any justification for appellants' threatened acts in the powers of taxation reserved in the 1919 cession.

That the tax imposed by the Act is limited to sales by licensed wholesalers in California is further evident from the provisions of Section 33 prescribing the manner of collection. The section reads:

> "Sec. 33. The tax imposed by section 24 of this act upon the sale of distilled spirits *shall be collected from rectifiers and wholesalers* of distilled spirits and payment of the tax shall be evidenced by stamps issued by the board *to such rectifiers and wholesalers.* In exceptional instances the board may sell such stamps to on- and off-sale distilled spirits licensees and other persons. No rectifier or wholesaler of distilled spirits, shall purchase distilled spirits excise stamps, except from the board or its duly authorized agents, nor dispose of such excise stamps except to on- or off-sale distilled spirits licensees when making sales of distilled spirits to such licensees as provided in section 32b."

Section 33c prescribes that these stamps shall be affixed by retail licensees at the time the cases are opened. Other provisions of the Act show that stamps are provided to be sold only to licensed wholesalers and they alone are responsible to the state for the taxes represented thereby. It seems obvious, therefore, that the taxes imposed by the Act are imposed only on wholesalers whose activities are subject to the licensing powers of California.

The Act (Sec. 6(d)) provides that importers' licenses may be issued only to licensed wholesalers and prohibits importation except by licensed importers (Sec. 49). No fee is provided for an importer's license, nor is any tax imposed on transfer from importer to wholesaler. The importer is not authorized to sell to retailers. The acts of

the company protected by the injunction herein consist entirely in the importation from without the State of California of alcoholic beverages to be sold by it within Yosemite National Park. No tax is specified in the Act for such a type of transaction, and in fact it is prohibited by the Act if performed within California. Unless, therefore, the State has the police power to regulate the manner of importation from without California into the Park, which under the decisions cited it has not, the Act itself does not purpose to impose a tax, and the threats of the Board in this respect are in excess of the jurisdiction given by the statute itself.

It should also be noted that Section 66 of the Act expressly disclaims any purpose to interfere with, regulate or tax alcoholic beverages in transit from points outside the State to other points outside the State. The Company's transactions are all within this express exemption.

It is shown by the bill, and admitted by the motion to dismiss, that interference with the importation by the Company of alcoholic beverages for sale in the Park would prevent performance of the Company's contract with the Secretary of the Interior. It is alleged and admitted that the Secretary has directed the Company not to apply for licenses under the Act and has refused to recognize taxes or license fees as an item of operating expense in the determination of the amounts payable to the government under the Company's contract. The contract shows that the Secretary has final discretion in the determination of proper operating expenses; that the Company is obligated to conform to all rules and regulations promulgated by him, and that he has complete control over the perform-

ance by the Company of its duties under the contract. We have, therefore, a case where the threatened activities of the State directly interfere with the performance by the Company of its duty to the Secretary and the United States. The case, therefore, is wholly dissimilar from *James v. Dravo Contracting Co.*, U. S. 58 S. Ct. 208, *Silas Mason Co. v. Tax Commission*, U. S. 58 S. Ct. 233, and *Atkinson v. State Tax Commission*, U. S. 58 S. Ct. 419, all decided during the current term, where it appeared that the activities of the State did not substantially interfere with performance of the various contracts with the government there involved, and where, in the latter two cases, the contract itself gave recognition to a continuing jurisdiction of the State over the areas on which the contract was to be performed.

The foregoing discussion, while primarily directed to the situation in Yosemite National Park outside Yosemite Valley, is equally applicable to the Valley, irrespective of the more extensive jurisdiction over the Valley ceded to the United States by the 1905 and 1906 acts.

IV. THE UNITED STATES HAS EXCLUSIVE JURISDICTION OVER YOSEMITE VALLEY, WITHOUT ANY RESERVATIONS.

The lower court held that as to Yosemite Valley (the area referred to in the Act of June 11, 1906, 34 Stats. 831), the United States has exclusive jurisdiction by virtue of the California Act of 1891* (Cal. Stats. 1891, p. 262), the

*The 1891 act obviously was meant to cede jurisdiction in areas not subject to Article I, Section 8(17) of the Constitution since Section 33 of the California Political Code, in effect since 1872, gave the consent necessary to bring into play the constitutional jurisdiction.

regrant of the Valley to the United States (Cal. Stats. 1905, p. 54), and its acceptance by the Act of June 11, 1906. This holding is in accord with *Standard Oil Co. v. California*, 291 U. S. 242; *Ft. Leavenworth R. R. Co. v. Lowe*, 114 U. S. 525; *Yellowstone Park Transportation Co. v. Gallatin County*, 31 Fed.(2d) 644, and many other cases.

While acceptance of such a cession of jurisdiction is presumed, as shown in the cases cited, the opinion in *Curtin v. Benson*, 222 U. S. 78, 86, indicates that the United States claimed sovereign rights long prior to 1919. There is nothing in the record herein to detract from the presumption of acceptance, and the case therefore is distinguished from *Silas Mason Co. v. Tax Commission*, U. S. 58 S. Ct. 233, and *Atkinson v. State Tax Commission*, U. S. 58 S. Ct. 419, decided at the present term.* In those cases it appeared that the United States in its contracts recognized the state jurisdiction by requiring the contractor to take out compensation insurance under state law, and otherwise to conform to state laws which would have no effect if jurisdiction were in the United States.

Standard Oil Co. v. Johnson, 95 Cal. Dec. 229, and *Yosemite Park and Curry Co. v. Johnson*, 95 Cal. Dec. 236, are relied on by appellants in opposition to the holding of the lower court. In those cases the Supreme Court of California expressly refused to follow the decision here under review. In those cases, however, the parties are in process of perfecting an appeal to the court, appellee herein being a party to one of those cases.*

---

*These opinions are also set forth in the Appendix to Appellants' Brief herein, pp. 33-50.

The Supreme Court of California, by necessary inference, if not directly, concedes that the 1891 and 1905 acts of California and the Act of June 11, 1906, had the effect attributed thereto by the lower court. In its opinion it is said:

> "If the legislative act of recession of 1905, the congressional acceptance thereof, and the related acts prior to that time, were alone to be considered, it might be said that the constitutional question is squarely presented for determination."

The court, however, finds in the 1919 Act of California and the Act of June 2, 1920 (41 Stats. 731) a desire in the state and federal governments to "reframe their agreement to accord with the relative existing rights of the respective sovereigns." The court concludes that its only function "is to recognize and give effect to the act of *recession* of 1919 and the act of acceptance of 1920," that "whatever had taken place before" certain taxing powers were reserved to the state, which it found (erroneously, we claim) to warrant collection of state sales and gasoline taxes on transactions in the Park. It said that the United States might hold a limited jurisdiction for purposes not specified in Article I, Section 8(17) of the Constitution, and that

> "* * * the cases relied upon do not preclude a holding that the extent of such limited jurisdiction for other than the specified purposes may not be *subject of change by mutual agreement* between the state and the United States."

We think it can fairly be deduced from these expressions of the court that it considered that the 1891, 1905

and 1906 acts, above referred to, served to transfer exclusive jurisdiction over the Valley to the United States (subject to constitutional questions), but that the 1919-1920 acts operated to *recede* to California a part of that exclusive jurisdiction so as to empower California to impose excise taxes on certain transactions occurring in the Park.

In this conclusion, we submit, the California Supreme Court erred. While it may be assumed that it would have been competent for the state and federal governments to have bargained in 1919 for a redistribution of governmental powers, and for the United States to recede to California all or a part of its exclusive jurisdiction over Yosemite Valley in return for entire or limited jurisdiction over the rest of Yosemite National Park and over Sequoia and General Grant Parks, there is nothing in the statutes manifesting any such purpose. In *Ryan v. State*, 188 Wash. 115, 61 Pac.(2d) 1276, 1283 (affirmed U. S. , 58 S. Ct. 233), it was said that a surrender of jurisdiction "will not be presumed", that it must be evidenced by "clearly expressed intent" and that the language of surrender must be "clear and unmistakable." This rule is equally applicable to a re-cession by the United States. If followed, the conclusion of the California court is erroneous.

The California Act of 1919 is clearly applicable to a vast area embraced in the three parks, not previously ceded. It shows no intent to reclaim something not then held but merely to "save" certain rights which otherwise would pass by the grant or cession of jurisdiction as to the enlarged area. After ceding exclusive jurisdiction over the three parks it provides:

> "* * * saving further, to the said state, the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks * * *."

This is purely language of exception, not of bargaining, or reclaiming something not then possessed. A saving clause is not apt to create rights. Its function is only to preserve. In *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149, at p. 262, this court said:

> "The usual function of a saving clause is to preserve something from immediate interference—not to create. * * *"

See also

Surplus Trading Co. v. Cook, 281 U. S. 647,

as to the strict construction of such a saving clause.

The California Act of 1919 was ineffective by itself to alter the existing status. Exclusive jurisdiction then being in the United States, nothing the state could do could impair it (*Yellowstone Park Transportation Co. v. Gallatin County*, 31 Fed.(2d) 644, 646; *In re Ladd*, 74 Fed. 31). The asserted regrant must therefore be found in the terms of the Act of June 2, 1920 (41 Stats. 731). That Act merely accepted the jurisdiction tendered by California, "saving further to the said state" the rights of taxation and licensing powers reserved in the California Act, in *haec verba*. The act of acceptance "*saving*" to the state specific powers cannot be read as a *grant* to the state of powers not held by the state, and not affected by the grant which was being accepted.

Further illustration of the strictness with which a relinquishment of jurisdiction must be viewed is found in *Barnsdall Refineries, Inc. v. Oklahoma Tax Commission*, 41 Pac.(2d) 918, 921, where the Oklahoma court construed a congressional consent to the imposition of certain taxes, saying:

> "* * * we should not create or presume the right to levy and collect one tax because the national government has consented to the levy and collection of another and a different tax."

This Court, in affirming the decision in *Oklahoma v. Barnsdall Refineries, Inc.*, 296 U. S. 521, 526, said:

> "Construing that consent with the strictness appropriate to the interpretation of a waiver of a defined tax immunity of the sovereign, we think the conclusion of the state court was right."

Exclusive jurisdiction having been ceded over the Valley by the 1906 Act, and not relinquished by the 1920 Act, the case is on all fours with *Standard Oil Co. v. California*, 291 U. S. 242, and other cases cited at the beginning of this discussion. California in Yosemite Valley has no governmental powers whatever.

V. IMPOSITION OF THE TAXES LEVIED BY THE ACT IS NOT WITHIN THE SCOPE OF THE POWER OF TAXATION RESERVED BY THE ACT OF JUNE 2, 1920.

The imposition of license fees and the collection of excise taxes on transactions in alcoholic beverages within Yosemite National Park is, we submit, beyond the scope of the taxing power reserved by the 1919 and 1920 acts

of cession. The act of June 2, 1920, after accepting exclusive jurisdiction as tendered by California, saved to the State certain of the powers of taxation as follows:

> "* * * saving further to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks * * *."

This saving clause was in the same words as those used by the state legislature in its tender of jurisdiction. The extent of the taxing power so saved is the question now presented.

It will be noted that the saving clause did not, as it very well could have done, save to the state its powers of taxation, in which case any exercise of the taxing power would be within the language of reservation. On the contrary it specifically limited the reserved powers to taxation of "persons and corporations, their franchises and property on the lands included in said parks", and further reserved the right to fix and collect license fees for fishing in the parks. The taxes here involved do not fall within any of the reserved powers. Clearly, they are not taxes on corporations, since they apply to individuals, partnerships and associations equally with corporate licensees. No franchise is involved or purported to be taxed. It is not a tax on property, which is otherwise imposed in addition to the excise provided in the Alcoholic Beverage Control Act. We submit that such a tax is not a tax on persons within the scope of the reservation but is merely a tax on the transactions in question.

It is quite logical that the scope of the reserved taxing power intentionally should have been limited. Direct taxes on persons and property are subject to rules of uniformity so that the continued existence of state taxing power in areas ceded to the United States involves little conflict between the state and federal jurisdiction. Excise taxes on transactions, however, even though referable to the taxing power, may be and frequently are imposed in furtherance of some supposed public policy and are aimed at regulation as well as revenue (*St. Louis etc. Co. v. St. Louis,* 249 U. S. 269).

In *State Tax on Foreign-Held Bonds,* 82 U. S. 300, 319, this court clearly established that excise taxes on transactions are generically distinguished from taxes on persons or corporations, saying:

> "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property *and business.* Whatever form taxation may assume, whether as duties, imposts, excises, or licenses, it must relate to one of these subjects."

See also *Beale on Conflict of Laws,* vol. 1, p. 519, *Cooley on Taxation* (4th ed.), Volume 1, p. 172; 26 *Ruling Case Law* 34; *State v. Welsh,* 251 N. W. 189, 202; *City of Santa Barbara v. Stearns,* 54 Cal. 495, 501; *Shaffer v. Carter,* 252 U. S. 37, 52; and *Diefendorf v. Gallet,* 10 Pac.(2d) 307, 312.

In the last case cited the Supreme Court of Idaho said:

> "In its modern sense an excise tax is any tax which does not fall within the classification of a poll

tax or a property tax, and embraces every form of burden *not laid directly upon persons or property.*"

In *Pollock v. Farmers L. & T. Co.*, 158 U. S. 601, 625, this court quoted from *Hamilton*, that:

"Duties, imposts and excises appear to be contra-distinguished from taxes."

The Alcoholic Beverage Control Act, in its title, and in sections 23 and 24, which impose the tax, refer to the tax solely as an "excise".

In *Standard Oil Co. v. Johnson*, 95 Cal. Dec. 229, 235, the Supreme Court of California, discussing the nature of the sales and gasoline taxes there involved, held:

"* * * This language in the statutes will not, of course, be construed to disturb the classification of taxable subjects—persons, property and business (State Tax on Foreign-Held Bonds, 82 U. S. 300, 319; 26 R. C. L., p. 34; 1 Cooley on Taxation, p. 172). Neither does it mean that the excise taxes imposed should be considered as a tax 'on persons' as a subject of taxation. The language of the statutes and the decisions still leaves the sales and gasoline taxes in the category of 'excises' or tax on business."

The Supreme Court of California in that case, however, concluded that the reservation of taxing power which we are now discussing "contemplated the reservation to the State of the general taxing power without any exceptions" and sustained the gasoline and sales taxes as applicable to transactions in Yosemite National Park. It is for that reason that those cases are being appealed to this Court.

The proper interpretation of this reservation is, of course, a federal question (*Silas Mason Co. v. Tax Commission,* U. S. 58 S. Ct. 233), and, we submit, the conclusion of the California Supreme Court in that respect errs in failing to apply the rule that all parts of the statute are to be given effect, and that a saving clause in derogation of a complete grant of power is to be strictly construed. By the act exclusive power and jurisdiction was ceded to the United States saving the enumerated powers of taxation. Only what comes fairly within the language of reservation is to be deemed excepted from the grant (*United States v. Dixon,* 15 Peters 141, 165). It is also fundamental that all words of the statute are to be given effect, and it is not to be assumed that the California legislature and Congress used the elaborate formula which they did if it was intended to reserve the general taxing power which could have been reserved by the simple statement "saving further to the State the power of taxation."

This conclusion is fortified by the terms of numerous other acts of cession recently enacted. In 1935 California tendered jurisdiction over certain lands with the following proviso:

> "provided, further, that the State of California shall retain a concurrent jurisdiction to license or tax persons and corporations and their property and transactions on such lands." (Cal. Stats. 1935, p. 1088)

See, also, Cal. Stats. 1935, p. 1175.

The Act of August 19, 1937 (50 Stats. 700) accepting jurisdiction over Shenandoah National Park from Virginia contains this provision:

> "and saving further to the said State the right to tax sales of gasoline and other motor vehicle fuels and oil for use in motor vehicles,"

following a reservation of the power to tax persons and corporations, etc., in the same language as contained in the Act of June 2, 1920.

While in *Rainier National Park Co. v. Martin,* 18 Fed. Supp. 481, a similarly phrased reservation in the cession by Washington of jurisdiction over Rainier National Park was said to include the entire taxing power, it appears from the opinion that but little attention was given this point and that primary reliance was placed on the supposed immunity of the plaintiff therein as a federal instrumentality. The affirmance of that decision by this Court in a *per curiam* opinion citing only *Mid-Northern Oil Co. v. Walker,* 268 U. S. 45, leads us to believe that the supposed immunity as a government instrumentality was the turning point of the case in this court, and we have therefore undertaken to re-examine the question despite the decision in the *Rainier* case.

Moreover, this case is distinguishable from the *Rainier* case in that the Washington cession did not include the further provision contained in the California cession, adding to the saving clause a reservation of "the right to fix and collect license fees for fishing in said parks." This express reservation of the power to impose one particular type of license fee demonstrates that the legislature of California and Congress did not construe the preceding reservation as adequate to empower the state to collect excises on transactions or privileges. The enumeration of a specific exception necessarily excludes all others (*Sutherland,*

Statutory Construction, Sec. 328). The court below distinguished the *Rainier* case in part upon this ground, and while the Supreme Court of California in *Standard Oil Co. v. Johnson*, 95 Cal. Dec. 229, disagreed with the court below as to the effect of the fishing license clause, we submit, its conclusion was incorrect.

The California Supreme Court treated the fishing license clause as reserving regulatory powers. No such regulatory power was reserved but merely a power to collect a tax from fishermen. It would be wholly inconsistent with the plenary jurisdiction ceded to the United States for California to permit holders of its fishing licenses to fish in the Park contrary to regulations established by the United States. The State has no power to enter the Valley for the purpose of stocking the streams without the consent of the United States. It cannot prescribe the fishing season on a different basis from that established by the United States, and the reservation is purely one for the purpose of collecting the additional revenue derived from the license.

Irrespective of all else that it said, it is apparent from the fishing license reservation that the licensing of liquor dealers and regulation of their business within the Park is wholly beyond the scope of the reserved powers of California.

We submit that the taxes imposed by the Alcoholic Beverage Control Act are as they are stated in the Act, purely excise taxes on transactions; that they are not taxes on persons or corporations, their franchises or property on lands in the Park and are therefore beyond the scope of the reserved taxing powers of California under

the 1919 and 1920 acts, and that this conclusion is fortified and this case distinguished from the *Rainier National Park Co.* case by the further provision in the California statutes, not found in the Washington statutes, specifically reserving to the state the power to fix and collect license fees for fishing,—a reservation which implies that similar taxes are not within the scope of the previously reserved power and which are of comparable character to the taxes here involved. Since only the specifically enumerated fishing license tax was reserved, it follows that other excise taxes were not reserved and that the taxes here in question are not authorized to be imposed by California under the saving clause of the acts ceding and accepting jurisdiction.

If, as a matter of policy, it is deemed appropriate that the states be permitted to impose taxes of this type, it is a simple matter for Congress to grant such powers in the areas subject to the exclusive jurisdiction of the United States. This has been done with respect of gasoline taxes and workmen's compensation laws. This, however, is a matter of congressional discretion. No consideration of policy or revenue needs of the states can avail to detract from the jurisdiction voluntarily granted by the state and accepted by the United States. The saving clause in derogation of the grant of plenary jurisdiction is to be strictly construed, and all its language given effect. If this be done it cannot be said to extend to taxes on transactions. Such taxes are not on persons, corporations, franchises or property and therefore are beyond the scope of the reserved power.

CONCLUSION.

We respectfully submit

(1) That the Twenty-first Amendment to the Constitution has no application in this case;

(2) That the United States has inherent power to accept and exercise exclusive jurisdiction over areas ceded by the states, or otherwise acquired, and used for national park purposes;

(3) That there is no restraint in the Constitution of the United States or the Constitution of California on the inherent sovereign power of California to cede territory to the United States;

(4) That such jurisdiction as depends on cession from a state to the United States is not limited to the purposes enumerated in Article I, Section 8(17) of the Constitution, that section operating merely as an automatic transfer of jurisdiction when its conditions are fulfilled and not as the sole basis of jurisdiction, either as to *methods* or *purposes*.

(5) That exclusive jurisdiction over Yosemite Valley without reservation of any police or taxing powers to California was ceded by virtue of the regrant of the Valley in 1905 and its acceptance by the Act of June 11, 1906, coupled with the 1891 cession of jurisdiction by California;

(6) That as to the remainder of Yosemite National Park, and irrespective of the preceding point to the Valley as well, the jurisdiction ceded to the United States by the 1919 Act, accepted by the Act of June 2, 1920, is such that California has no power to license, regulate or control the Company's transactions in alcoholic beverages within the Park pursuant to its contract with the Secretary of the Interior;

(7) That interference by the State, as threatened, with the Company's property in the Park and in course of transit thereto from points outside of California would interfere with and prevent performance by the Company of its contract with the Secretary of the Interior;

(8) That the taxing features of the Alcoholic Beverage Control Act of California are directed solely to the subjects of its licensing requirements, that they are not by the statute made applicable to the Company's operations, and may not be separately sustained in the absence of power to license and regulate the transactions in respect of which the excise is imposed;

(9) That excise taxes of this character are beyond the scope of the power of taxation reserved to California by the 1919 and 1920 acts;

(10) That the decision of the lower court is correct and should be affirmed.

Respectfully submitted,

HERMAN PHLEGER,
MAURICE E. HARRISON,
GREGORY A. HARRISON,
JAMES S. MOORE, JR.,

Attorneys for Appellee.

BROBECK, PHLEGER & HARRISON,
Of Counsel.

(APPENDIX FOLLOWS)

BLANK

PAGE

APPENDIX.

CAL. STATS. 1905, p. 54:

An act to re-cede and re-grant unto the United States of America, the "Yosemite Valley," and the land embracing the "Mariposa Big Tree Grove."

(Approved March 3, 1905.)

The people of the State of California, represented in senate and assembly, do enact as follows:

Section 1. The State of California does hereby re-cede and re-grant unto the United States of America, the "Cleft" or "Gorge" in the granite peak of the Sierra Nevada mountains, situated in the county of Mariposa, State of California, and the headwaters of the Merced River, and known as the Yosemite Valley, with its branches or spurs, granted unto the State of California in trust for public use, resort and recreation by the act of Congress entitled "An act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the 'Mariposa Big Tree Grove,'" approved June 30th, 1864; and the State of California does hereby relinquish unto the United States of America and resign the trusts created and granted by the said act of congress.

Sec. 2. The State of California does hereby re-cede and re-grant unto the United States of America, the tracts embracing what is known as the "Mariposa Big Tree Grove," granted unto the State of California in trust for public use, resort and recreation by the act of congress referred to in section 1 of this act; and the State of California does hereby relinquish unto the United States of

America and resign the trusts created and granted by the said act of congress.

Sec. 3. This act shall take effect from and after acceptance by the United States of America of the re-cessions and re-grants herein made, thereby forever releasing the State of California from further cost of maintaining the said premises, the same to be held for all time by the United States of America for public use, resort and recreation, and imposing on the United States of America the cost of maintaining the same as a national park. *Provided, however,* that the re-cession and re-grant hereby made shall not affect vested rights and interests of third persons.

ACT OF JUNE 11, 1906 (34 STATS. 831, SECTION 1):

RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled, That the recession and regranting unto the United States by the State of California of the cleft or gorge in the granite peak of the Sierra Nevada Mountains, situated in the county of Mariposa, State of California, and the headwaters of the Merced River, and known as the Yosemite Valley, with its branches or spurs, granted unto the State of California in trust for public use, resort, and recreation by the Act of Congress entitled "An Act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the Mariposa Big Tree Grove," approved June thirtieth, eighteen hundred and sixty-four (Thirteenth Statutes, page three hundred and twenty-five), as well as the tracts embracing what is known as the "Mariposa Big Tree Grove," likewise granted unto the State of California by the aforesaid Act of Congress, is

hereby ratified and accepted, and the tracts of land embracing the Yosemite Valley and the Mariposa Big Tree Grove, as described in the Act of Congress approved June thirtieth, eighteen hundred and sixty-four, together with that part of fractional sections five and six, township five south, range twenty-two east, Mount Diablo meridian, California, lying south of the South Fork of Merced River and almost wholly between the Mariposa Big Tree Grove and the present south boundary of the Yosemite National Park, be, and the same are hereby, reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States and set apart as reserved forest lands, subject to all the limitations, conditions, and provisions of the Act of Congress approved October first, eighteen hundred and ninety, entitled "An Act to set apart certain tracts of land in the State of California as forest reservations," as well as the limitations, conditions, and provisions of the Act of Congress approved February seventh, nineteen hundred and five, entitled "An Act to exclude from the Yosemite National Park, California, certain lands therein described, and to attach and include the said lands in the Sierra Forest Reserve," and shall hereafter form a part of the Yosemite National Park.

CAL. STATS. 1891, p. 262:

An Act ceding to the United States of America jurisdiction over lands in this State ceded to the United States.

(Approved March 31, 1891.)

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Section 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may be hereafter ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this State and the service of civil process therein.

Sec. 2. This Act shall take effect immediately.

CAL. STATS. 1919, p. 74:

An act to cede to the United States exclusive jurisdiction over Yosemite national park, Sequoia national park, and General Grant national park in the State of California.

(Approved April 15, 1919. In effect July 22, 1919.)

The people of the State of California do enact as follows:

Section 1. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as "Yosemite national park," "Sequoia national park," and "General Grant national park" re-

spectively; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situate; *provided, however,* that jurisdiction shall not vest until the United States through the proper officer notifies the State of California that they assume police jurisdiction over said parks.

SECTION 1 OF THE ACT OF JUNE 2, 1920 (41 STATS. 731):

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of the Legislature of the State of California (approved April 15, 1919), ceding to the United States exclusive jurisdiction over the territory embraced and included within Yosemite National Park, Sequoia National Park, and General Grant National Park, respectively, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving, however, to the said State of California the right to serve civil or criminal process within the limits of the aforesaid parks or either of them in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said parks; and saving further to the said

State the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situated. All the laws applicable to places under sole and exclusive jurisdiction of the United States shall have force and effect in said parks or either of them. All fugitives from justice taking refuge in said parks, or either of them, shall be subject to the same laws as refugees from justice found in the State of California.

BLANK

PAGE

BLANK

PAGE

BLANK

PAGE

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 870

R. E. COLLINS, ET AL., APPELLANTS

v.

YOSEMITE PARK & CURRY CO.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MEMORANDUM FOR THE UNITED STATES

This Court on April 4, 1938, certified to the Attorney General pursuant to the Act of August 24, 1937, that the constitutionality of the Acts of June 11, 1906, 34 Stat. 831, and June 2, 1920, c. 218, 41 Stat. 731, were drawn in question. These Acts accept on behalf of the United States exclusive jurisdiction over the areas which embrace the Yosemite National Park.

The appellants do not raise any question as to the authority of Congress to provide for national parks (Br. 17). They assail the Acts in question on the ground that the United States had no power to accept exclusive jurisdiction of territory acquired or devoted to such purposes (Br. 10–17).

61318—38

The question of the constitutionality of these Acts is, of course, of great importance to the United States and directly affects the public interest. However, the brief for the appellees (pp. 17–25) sets forth the authorities which indicate that exclusive jurisdiction may be acquired by the United States through cession from the States for purposes in addition to those enumerated in Clause 17 of Section 8 of Article I of the Constitution. Any discussion of the question on behalf of the United States would revolve about the same authorities. It therefore seems unnecessary for the United States to intervene in this cause.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.

APRIL 1938.

U. S. GOVERNMENT PRINTING OFFICE: 1938

SUPREME COURT OF THE UNITED STATES.

No. 870.—October Term, 1937.

R. E. Collins, John C. Corbett and Fred B. Stewart, et al., Appellants, *vs.* Yosemite Park and Curry Co.	Appeal from the District Court of the United States for the Northern District of California.

[May 31, 1938.]

Mr. Justice Reed delivered the opinion of the Court.

Appellee, the Yosemite Park and Curry Co., brought this suit to enjoin the State Board of Equalization and the State Attorney General from enforcing the "Alcoholic Beverage Control Act" of the State of California,[1] within the limits of Yosemite National Park. Appellee is engaged in operating, within the Park, hotels, camps, and stores, under a contract with the Secretary of the Interior, leasing portions of the Park to appellee for a 20-year term. The contract, expressly intended to implement the Congressional desire to make the Park a resort and playground for the benefit of the public, places upon appellee the duty of furnishing visitors with sundry facilities and accommodations. If it pays dividends in excess of 6% on its investment it must pay to the Secretary of the Interior a sum equal to 25% of the excess during the first ten years, and 22½% of any excess over six per cent. earned during the second ten years. Appellee sells liquors, beer and wine to Park visitors for prices approved by the Secretary of the Interior. In the ordinary course of business, it imports from places outside of California beer, wine, and distilled spirits, which it stores and sells within the Park.

According to the allegations of appellee's bill, appellants (defendants below) assert that the Alcoholic Beverage Control Act applies within the Park and that appellee is obligated to apply for permits for importation and sale; that appellee is subject to provisions of the Act prohibiting the issuance of importer's licenses to persons holding on-sale retail licenses, and vice versa; that ap-

[1] Cal. Stat. 1935, c. 330, as amended, Cal. Stat. 1937, c. 681, 758.

pellee must pay fees and taxes imposed by the Act or be subject to penalties. Allegation was made that appellants threaten to seize beverages on or being transported to appellee's premises, demand rendition of reports and keeping of accounts, and threaten to institute civil and criminal proceedings against appellee for violation of the Act. On the other hand, appellee's allegations continue, the Secretary of the Interior, under the contract of lease, has approved prices making no allowance for taxes, and has instructed appellee to apply for no license and to pay no tax under the California Act, and that payment of such license fees or taxes will not be allowed as an operating expense under the contract.

Appellee brought this suit to restrain enforcement of the Alcoholic Beverage Control Act within Yosemite Park, on the theory that the Park is within the exclusive jurisdiction of the United States. The suit being one to restrain the enforcement of a State statute as applied to a specific situation, a three-judge court was convened under Section 266 of the Judicial Code, 28 U. S. C. A. § 380. The case was heard below upon motion to dismiss the complaint. The District Court denied this motion. It granted a temporary injunction (20 F. Supp. 1009), and later granted the final injunction prayed for by the complaint, restraining appellants (a) from entering upon appellee's premises, examining its records, seizing its beverages, or interfering with its importation and sales of beverage within the Park; (b) from interfering with shipments to appellee from outside the State; (c) from instituting any actions based on alleged violations of the Act with respect to the importation, possession, or sale of liquors; (d) from requiring reports thereon; (e) from enforcing the Act as to transactions within the Park.

The District Court, after noting that Yosemite National Park consists of Yosemite Valley and considerable surrounding territory, first discussed what it conceived to be the situation in the Valley.[2] It reviewed the history of the land; the United States acquired it in 1848 under the Treaty of Guadalupe Hidalgo,[3] reserved proprietary rights when California became a State in 1850,[4] and on

[2] The discussion applies equally to the Mariposa Big Tree Grove.

[3] 9 Stat. 922.

[4] 9 Stat. 452.

June 30, 1864, gave the Valley to California in trust for public park and recreational purposes.[5]

The District Court held that exclusive jurisdiction over the land was acquired again by the United States by virtue of the joint operation of three statutes: an 1891 California law ceding to the United States exclusive jurisdiction over such land as might be ceded to it;[6] a 1905 California statute receding the Valley to the United States;[7] and the Act of June 11, 1906, whereby Congress accepted the regrant and constituted the Valley a part of the Yosemite National Park.[8] It further held, over appellants' objection, that there was no constitutional obstacle to the acquisition

---

[5] 13 Stat. 325.

[6] "Section 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may be hereafter ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this State and the service of civil process therein." Cal. Stat. 1891, c. 181.

[7] "*An act to recede and regrant unto the United States of America, the 'Yosemite Valley,' and the land embracing the 'Mariposa Big Tree Grove.'*

"Section 1. The State of California does hereby recede and regrant unto the United States of America, the 'Cleft' or 'Gorge' in the granite peak of the Sierra Nevada mountains, situated in the county of Mariposa, State of California, and the headwaters of the Merced river, and known as the Yosemite Valley, with its branches or spurs, granted unto the State of California in trust for public use, resort and recreation by the act of congress entitled 'An act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the 'Mariposa Big Tree Grove,' approved June 30th, 1864; and the State of California does hereby relinquish unto the United States of America and resign the trusts created and granted by the said act of congress.

"Sec. 3. This act shall take effect from and after acceptance by the United States of America of the recessions and regrants herein made, thereby forever releasing the State of California from further cost of maintaining the said premises, the same to be held for all time by the United States of America for public use, resort and recreation, and imposing on the United States of America the cost of maintaining the same as a national park. *Provided, however,* that the recession and regrant hereby made shall not affect vested rights and interests of third persons." Cal. Stat. 1905, c. 60.

[8] "*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the recession and regranting unto the United States by the State of California of the cleft or gorge in the granite peak of the Sierra Nevada Mountains, situated in the county of Mariposa, State of California, and the headwaters of the Merced River, and known as the Yosemite Valley, with its branches or spurs, granted unto the State of California in trust for public use, resort, and recreation by the Act of Congress entitled 'An Act authorizing a grant to the State of California of the Yosemite Valley and of the land embracing the Mariposa Big Tree Grove,' approved June thirtieth, eighteen hundred and sixty-four (Thirteenth Statutes, page three hundred and twenty-five), as well as the tracts embracing what is known as the 'Mariposa Big Tree Grove,' likewise granted unto the State of California by the aforesaid Act of Congress, is hereby ratified and accepted,

by the United States of exclusive jurisdiction over land ceded to it for national park purposes. Jurisdiction over the rest of the Park, it concluded, was in the State until April 15, 1919, when it was offered to the national government (which had always retained the proprietary interest) in a statute saving to the State, inter alia, "the right to tax persons and corporations, their franchises and property on the lands included in said parks."[9] Jurisdiction of the Park was assumed by the United States by Act of June 2, 1920, which referred to the state act, including its reservation of a power to tax.[10] The District Court held this reservation inapplicable, on

---

and the tracts of lands embracing the Yosemite Valley and the Mariposa Big Tree Grove, as described in the Act of Congress approved June thirtieth, eighteen hundred and sixty-four, together with that part of fractional sections five and six, township five south, range twenty-two east, Mount Diablo meridian, California, lying south of the South Fork of Merced River and almost wholly between the Mariposa Big Tree Grove and the present south boundary of the Yosemite National Park, be, and the same are hereby, reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States and set apart as reserved forest lands, subject to all the limitations, conditions, and provisions of the Act of Congress approved October first, eighteen hundred and ninety, entitled 'An Act to set apart certain tracts of land in the State of California as forest reservations,' as well as the limitations, conditions, and provisions of the Act of Congress approved February seventh, nineteen hundred and five, entitled 'An Act to exclude from the Yosemite National Park, California, certain lands therein described, and to attach and include the said lands in the Sierra Forest Reserve,' and shall hereafter form a part of the Yosemite National Park." 34 Stat. 831.

9 "*An act to cede to the United States exclusive jurisdiction over Yosemite national park, Sequoia national park, and General Grant national park in the State of California.*

"Section 1. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as 'Yosemite national park,' 'Sequoia national park,' and 'General Grant national park' respectively; saving, however, to the State of California the right to serve civil or criminal process within the limits of the aforesaid parks in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state outside of said parks; and saving further, to the said state the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situate; *provided, however*, that jurisdiction shall not vest until the United States through the proper officer notifies the State of California that they assume police jurisdiction over said parks." Cal. Stat. 1919, c. 51.

10 41 Stat. 731, 16 U. S. C. A. § 57.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the provisions of the act of the Legislature of the State of California (approved April 15, 1919), ceding to the United States exclusive jurisdiction over the territory embraced and in-

the ground that the Alcoholic Beverage Act is chiefly regulatory in nature rather than a revenue measure. Concluding that the United States had exclusive jurisdiction over the land in question, the District Court enjoined the enforcement of the state Act.

From this final decree of injunction, a direct appeal to this Court was taken under Sections 238 and 266 of the Judicial Code. Several questions were argued on the appeal. At this point, reference may be confined to appellants' contention that the United States has no power under the Constitution to exercise exclusive jurisdiction over land ceded to it by a state for national park purposes. Pursuant to the Act of August 24, 1937, the Court certified to the Attorney General that in this cause was drawn in question the constitutionality of the Acts of June 11, 1906, 34 Stat. 831, and June 2, 1920, 41 Stat. 731, accepting exclusive jurisdiction over the areas which embrace the Yosemite National Park. The United States, regarding appellee's argument as adequate, determined that it was not necessary to intervene.

Exclusive jurisdiction. By the Act of March 3, 1905, see note 7, California ceded and granted the United States title to the "Cleft" or "Gorge," known as Yosemite Valley and the Mariposa Big Tree Grove. As the Act of March 31, 1891, was then in force, see note 6, exclusive jurisdiction, with the exception of right to administer criminal laws and serve civil process, passed to the United States, on its acceptance, unless the United States was without constitutional power to exercise it. By the Act of June 11, 1906, see note 8, the Congress accepted the cession and made the lands conveyed a part of the Yosemite National Park. The other lands composing the Park had been in the proprietorship of the national

---

cluded within the Yosemite National Park, Sequoia National Park, and General Grant National Park, respectively, are hereby accepted and sole and exclusive jurisdiction is hereby assumed by the United States over such territory, saving however, to the said State of California the right to serve civil or criminal process within the limits of the aforesaid parks or either of them in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said parks; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said parks, and the right to fix and collect license fees for fishing in said parks; and saving also to the persons residing in any of said parks now or hereafter the right to vote at all elections held within the county or counties in which said parks are situated. All the laws applicable to places under sole and exclusive jurisdiction of the United States shall have force and effect in said parks or either of them. All fugitives from justice taking refuge in said parks, or either of them, shall be subject to the same laws as refugees from justice found in the State of California."

government since cession by Mexico. Exclusive jurisdiction of them passed from the United States to California by the admittance of that State to the Union. Except for certain rights expressly reserved, exclusive jurisdiction of these lands was granted to the United States by the Act of April 15, 1919, see note 9, and accepted by the Congress on June 2, 1920, see note 10. As this Act granted exclusive jurisdiction over all "territory which is now or may hereafter be . . . included in . . . Yosemite National Park," the language of the cession and acceptance is apt to determine exclusive jurisdiction, with the explicit reservations, of the Gorge also.

Whatever the existing status of jurisdiction at the time of their enactment, the Acts of cession and acceptance of 1919 and 1920 are to be taken as declarations of the agreements, reached by the respective sovereignties, State and Nation, as to the future jurisdiction and rights of each in the entire area of Yosemite National Park. As jurisdiction over the Gorge was created by one set of statutes and that over the rest of the Park by different legislation, this adjustment was desirable. The States of the Union and the National Government may make mutually satisfactory arrangements as to jurisdiction of territory within their borders and thus in a most effective way, cooperatively adjust problems flowing from our dual system of government.[11] Jurisdiction obtained by consent or cession may be qualified by agreement or through offer and acceptance or ratification.[12] It is a matter of arrangement. These arrangements the courts will recognize and respect.

The State urges the constitutional inability of the national government to accept exclusive jurisdiction of any land for purposes other than those specified in clause 17, section 8, Article I of the Constitution.[13] This clause has not been strictly construed. This

[11] Cf. Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525, 541; Hinderlider v. The LaPlata and Cherry Creek Ditch Co., No. 367, this Term, pamphlet page 7.

[12] James v. Dravo Contracting Company, 302 U. S. 134, 146; Silas Mason Co. v. Tax Commission of Washington, 302 U. S. 186, 203; Fort Leavenworth R. R. Co. v. Lowe, *supra;* Surplus Trading Company v. Cook, 281 U. S. 647, 651.

[13] "To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;"

Court at this term has given full consideration to the constitutional power of the United States to acquire land under Clause 17 without taking exclusive jurisdiction.[14] In that case, it was said: "Clause 17 contains no express stipulation that the consent of the State must be without reservations. We think that such a stipulation should not be implied. We are unable to reconcile such an implication with the freedom of the State and its admitted authority to refuse or qualify cessions of jurisdiction when purchases have been made without consent or property has been acquired by condemnation." The clause is not the sole authority for the acquisition of jurisdiction. There is no question about the power of the United States to exercise jurisdiction secured by cession, though this is not provided for by Clause 17.[15] And it has been held that such a cession may be qualified.[16] It has never been necessary, heretofore, for this Court to determine whether or not the United States has the constitutional right to exercise jurisdiction over territory, within the geographical limits of a State, acquired for purposes other than those specified in Clause 17. It was raised but not decided in *Arlington Hotel Co.* v. *Fant*, 278 U. S. 439, 454. It was assumed without discussion in *Yellowstone Park Transportation Co.* v. *Gallatin County*, 31 F. (2d) 644.[17]

On account of the regulatory phases of the Alcoholic Beverage Control Act of California, it is necessary to determine that question here. The United States has large bodies of public lands. These properties are used for forests, parks, ranges, wild life sanctuaries, flood control, and other purposes which are not covered by Clause 17. In *Silas Mason* v. *Tax Commission of Washington*, 302 U. S. 186, we upheld in accordance with the arrangements of the State and National Government the right of the United States to acquire private property for use in "the reclamation of arid and semi-arid lands" and to hold its purchases subject to state jurisdiction. In other instances, it may be deemed important or desirable by

[14] James v. Dravo Contracting Co., 302 U. S. 134, 148.

[15] Fort Leavenworth R. R. Co. v. Lowe, *supra*; Chicago, R. I. & P. Ry. Co. v. McGlinn, 114 U. S. 542; Benson v. United States, 146 U. S. 325; Arlington Hotel Co. v. Fant, 278 U. S. 439; United States v. Unzeuta, 281 U. S. 138; Surplus Trading Co. v. Cook, 281 U. S. 647; Standard Oil Co. v. California, 291 U. S. 242; Yellowstone Park Transportation Co. v. Gallatin County, 31 F. (2d) 644.

[16] Fort Leavenworth R. R. Co. v. Lowe, *supra*.

[17] Cf. Rainier Nat. Park Co. v. Martin, 18 F. Supp. 482.

the national government and the state government in which the particular property is located that exclusive jurisdiction be vested in the United States by cession or consent. No question is raised as to the authority to acquire land or provide for national parks. As the national government may, "by virtue of its sovereignty" acquire lands within the borders of states by eminent domain and without their consent,[18] the respective sovereignties should be in a position to adjust their jurisdictions. There is no constitutional objection to such an adjustment of rights. It follows that jurisdiction less than exclusive may be granted the United States. The jurisdiction over the Yosemite National Park is exclusively in the United States except as reserved to California, e. g., right to tax, by the Act of April 15, 1919. As there is no reservation of the right to control the sale or use of alcoholic beverages, such regulatory provisions as are found in the Act under consideration are unenforceable in the Park.

Interpretation of Reservations. The lower court, in interpreting the language of the Acts of grant and acceptance was of the opinion that the saving of "the right to tax persons and corporations, their franchises and property" was not sufficiently broad to justify the collection of fees for licenses under section 5 and sales under sections 23 and 24 of the Alcoholic Beverage Control Act.[19]

---

[18] James v. Dravo Contracting Co., *supra*, 147; Kohl v. United States, 91 U. S. 367, 371, 372.

[19] "Sec. 5. The following are the types of licenses to be issued under this act and the annual fees to be charged therefor.

1. Beer manufacturer's license	$750.00 per year
2. Wine manufacturer's license (to be computed only on the gallonage manufactured) five thousand gallons or less	20.00 per year
Over five thousand gallons to twenty thousand gallons per year	40.00 per year
Over twenty thousand to one hundred thousand gallons per year	75.00 per year
Over one hundred thousand to two hundred thousand gallons per year	100.00 per year
Over two hundred thousand gallons to one million gallons a year	150.00 per year
For each million gallons or fraction thereof over a million gallons an additional	100.00 per year
3. Distilled spirits manufacturer's license	250.00 per year
4. Still license	10.00 per year per still
5. Rectifier's license	250.00 per year
6. Brandy manufacturer's license	150.00 per year
7. Distilled spirits importer's license	no fee
8. Wine importer's license	no fee
9. Beer importer's license	no fee

The retention of the right to charge license fees for fishing was considered an indication of abandonment of the right to enforce any other license fees and finally, the regulatory character of the California enactment was deemed to mark it as non-enforceable under the reservation of the right to tax.

As the respective acts of State and Nation were in the nature of a mutual declaration of rights, this is not an occasion for strict construction of a grant by a State limiting its taxing power. Without employing that rule, we are of the opinion that this language

10. Public warehouse license	10.00 per year
11. Wine bottling or packaging license	10.00 per year
12. Beer bottling or packaging license	500.00 per year
13. Distilled spirits wholesaler's license	250.00 per year
14. Beer and wine wholesaler's license	50.00 per year
15. Broker's license	250.00 per year
16. Retail package off-sale beer and wine license	10.00 per year
17. Retail package off-sale distilled spirits license for the first $10,000 retail sales per year	100.00 per year
For each $1,000 retail sales or fraction thereof over $10,000 per year	10.00 per year
18. Industrial alcohol dealer's license	50.00 per year
19. On-sale beer license	25.00 per year
20. On-sale beer and wine license	75.00 per year
21. On-sale beer and wine license for trains (per train)	15.00 per year
22. On-sale beer and wine license for boats (per boat)	50.00 per year
23. On-sale distilled spirits license	As set by the board
24. Distilled spirits manufacturer's agents license	250.00 per year"

"Sec. 23. An excise tax is hereby imposed upon all beer and wine sold in this State by a manufacturer or importer, except as otherwise in this act provided, at the following rates:

"(a) On all beer, sixty-two cents for every barrel containing thirty-one gallons, and at a proportionate rate for any other quantity;

"(b) On all natural dry wines one cent per wine gallon and at a proportionate rate for any other quantity; (c) on all other still wines two cents per wine gallon and at a proportionate rate for any other quantity; (d) on champagne, sparkling wine, except sparkling hard cider, whether naturally or artificially carbonated one and one-half cents per half pint or fraction thereof, three cents per pint or fraction thereof greater than one-half pint, six cents per quart or fraction thereof greater than one pint; (e) on sparkling hard cider two cents per wine gallon and at a proportionate rate for any other quantity. (Statutes 1937, ch. 758; operative July 1, 1937)."

"Sec. 24. An excise tax is hereby imposed upon all distilled spirits sold in this State by rectifiers or wholesalers thereof, at the following rates:

"On all distilled spirits of proof strength or less, two cents on each bottle containing two ounces or fraction thereof; five cents on each bottle containing eight ounces or fraction thereof greater than two ounces; ten cents on each bottle containing one pint or fraction thereof greater than a half-pint; sixteen cents on each bottle containing one-fifth gallon or fraction thereof greater than one pint; twenty cents on each bottle containing one quart or fraction thereof greater than one-fifth gallon; forty cents on each bottle containing one-half gallon or fraction thereof, greater than one quart; eighty cents on each bottle containing one gallon or fraction thereof greater than one-half gallon, and at a proportionate rate for any quantity.

"All distilled spirits in excess of proof strength shall be taxed at double the above rate. (Statutes 1937, ch. 758; operative July 1, 1937.)"

is sufficiently broad to cover excises on sales,[20] but not the license fees provided for by this Act. The fact that the "right to fix and collect license fees for fishing in said parks" was reserved, is not decisive. It may well be that the negotiators of the agreement considered such licenses regulatory in nature and therefore requiring express exception from the agreement for exclusive jurisdiction, in addition to the tax exception.

(a) Licenses. As the State of California has in the area of the Yosemite National Park only the jurisdiction saved under the cession and acceptance acts of 1919 and 1920, it does not have the power to regulate the liquor traffic in the Park. Except as to this reserved jurisdiction, California "put that area beyond the field of operation of her laws."[21] While the State has, under its reservation, the right to use means to force collection of the taxes saved,[22] it seems clear that the licenses required by section 5 go beyond aids to the collection of taxes and are truly regulatory in character. This is not a case where provisions requiring a license may be treated as separable from regulations applicable to those licensed.[23] Here the regulatory provisions appear in the form of conditions to be satisfied before a license may be granted.[24] The provisions re-

[20] Mid-Northern Oil Co. *v.* Walker, Treas., 268 U. S. 45, 49; Rainier Nat. Park Co. *v.* Martin, 18 F. Supp. 481, 486, affirmed, 302 U. S. 661, on the authority of the Walker case.

In this view we need not consider appellants' argument that the Constitution of California forbids the release of the taxing power.

[21] Standard Oil Co. *v.* California, 291 U. S. 242.

[22] Rainier National Park *v.* Martin, 18 F. Supp. 481, 488.

[23] Cf. Electric Bond and Share Co. *v.* S. E. C., No. 636, present Term, decided March 28, 1938.

[24] Art. XX, sec. 22, of the California Constitution provides that the State Board of Equalization "shall have the power, in its discretion, to deny or revoke any specific liquor license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals."

The Alcoholic Beverage Control Act, Cal. Stat. 1935, c. 330, as amended Stat. 1937, c. 681, c. 758, contains, inter alia, provisions that no person may perform acts authorized by a license, unless licensed (sec. 3); that an importer's license may be issued only to the holder of a manufacturer's, rectifier's, or wholesaler's license, sec. 6(d); that application of a required type be filed for a license (sec. 10); that no on-sale distilled spirits license shall be issued to any applicant who is not a citizen of the United States (sec. 12); that no distilled spirits license may be issued to any person or agent of any person who manufactures distilled spirits within or without the State (sec. 20½); that retail licenses may not be granted for premises in certain locations (secs. 13-17); that no retail on-sale or off-sale licensee shall purchase alcoholic beverages for resale from any person except a person holding a beer, or wine, manufacturer's, a rectifier's or a wholesaler's license issued under this act (sec. 6.6).

quiring licenses for the importation or sale of alcoholic beverages in the Park are invalid.

(b) Excise Taxes. A different conclusion obtains, however, with respect to the excise tax provisions of the Alcoholic Beverage Control Act, laying a tax, at a specified rate per unit sold, on beer, wine, and distilled spirits sold "in this State." The Park Company, seeking to bring the excise provisions of the Act within the principle stated above with respect to the license fee provisions, contends that, notwithstanding the separability clause,[25] the taxing features cannot be separated from the regulatory features, and that "the Act does not even purport to tax persons not subject to licensing requirements." Thus the argument is made that sec. 23 imposes an excise tax on beer and wine sold by an importer, and applies not to the Company, which sells beverages direct to consumers, but only to importers licensed under the Act, and restricted by their license to sales to retail licensees.

Neither party cites any pertinent state court decision. There is nothing in the statute itself compelling the conclusion that the excise tax and regulatory provisions are inseparable, or requiring the Court to overturn the presumptively correct determination of the administrative officers that the sales within the Park are subject to the excise tax. Section 23 provides that an excise tax is imposed upon beer and wine sold "in this State by [an] . . . importer." Reference to provisions of the Act defining the terms used in this section[26] makes it plain that although appellee Company does not import beverages into California within the meaning of the Twenty-First Amendment, it is an importer for purposes of the Act, and, as such, is subject to the tax. The Act is restricted to sales "in this State," but that term embraces all terri-

[25] "Sec. 70. If any section, subsection, clause, sentence or phrase of this act which is reasonably separable from the remaining portion of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The Legislature hereby declares that it would have passed the remaining portions of this act irrespective of the fact that any such section, subsection, clause, sentence or phrase of this act be declared unconstitutional."

[26] Sec. 2(k): "'Importer' means any consignee of alcoholic beverages brought into this State from without this State when such alcoholic beverages are for delivery or use within this State, . . ." Sec. 2(w): "'Within this State' means all territory within the boundaries of this State." Sec. 2(wl): "'Without the State' means all territory without the boundaries of the State."

tory within the geographical limits of the State.[27] There is nothing in the Act restricting this taxing provision to sales made by or to persons licensed under the Act. Sec. 23 clearly applies to beer and wine sold by appellee Company in the Park, and it applies to such sales regardless of the applicability *vel non* of the regulatory or licensing provisions of the Act.

Section 24 imposes an excise tax upon all distilled spirits "sold in this State by rectifiers or wholesalers." Appellee Company does not come within the statutory definition of either of these groups,[28] but Sec. 24 must be read in conjunction with Sec. 33. Sec. 33 provides that the "tax imposed by Sec. 24 of this act upon the sale of distilled spirits shall be collected from rectifiers and wholesalers of distilled spirits and payment of the tax shall be evidenced by stamps issued by the board to such rectifiers and wholesalers," and continues with the provision that "in exceptional instances the board may sell such stamps to on- and off-sale distilled spirits licensees and *other persons.*" (Italics added.) In view of the atypical circumstances of the present case, we cannot consider erroneous an interpretation by the board that stamps, to be affixed to the liquor containers, might be issued and sold to appellee Company. These provisions, like sec. 23, are independent of any licensing or regulatory provisions of the Act, and may be enforced independently, as a purely tax or revenue measure.

The objection that collection of the taxes may not only interfere with an agency of the United States but may be actually partly collected from the National Government because of its interest in the profits under the contract is fully answered by the fact that the United States, by its acceptance of qualified jurisdiction, has consented to such a tax.[29]

---

27 See *supra*, note 26. See boundary of State of California as defined in Cal. Const., Art. XXI, § 1.

Compare Rainier Nat. Park Co. *v.* Martin, 18 F. Supp. 481, 486 (W. D. Wash.), affirmed 302 U. S. 661.

28 Sec. 2(j) "'Rectifier' means every person who colors, flavors, or otherwise processes distilled spirits by distillation, blending, percolating or other processes."

(s) "'Wholesaler' means and includes every person other than a manufacturer or rectifier who is engaged in business as a jobber or wholesale merchant, dealing in alcoholic beverages."

29 Rainier Nat. Park Co. *v.* Martin, 302 U. S. 661; cf. Baltimore Nat. Bank *v.* State Tax Commission, 297 U. S. 209.

XXI Amendment. The State makes the point that section 2 of the XXI Amendment[30] gives it the right to regulate the importation of intoxicating liquors. Reliance for enforcement is placed upon sections 49 and 49.2 of the Alcoholic Beverage Control Act.[31] The argument for this claim is bottomed upon our decision in *State Board of Equalization* v. *Young's Market Co.*, 299 U. S. 59, where we held that a statute imposing a $500 license fee for importing and a $750 license fee for brewing beer did not violate the commerce clause or the equal protection clause, because the words of the XXI Amendment "are apt to confer upon the State the power to forbid all importations" and "the State may adopt a lesser degree of regulation than total prohibition" (pp. 62, 63).[32] The lower court was of the opinion that though the Amendment may have increased "the state's power to deal with the problem . . . , it did not increase its jurisdiction." With this conclusion, we agree.

---

30 "Sec. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

31 "Sec. 49. Alcoholic beverages shall be brought into this State from without this State for delivery or use within the State only when such alcoholic beverages are consigned to a licensed importer and only when consigned to the premises of such licensed importer or to the premises of a public warehouse licensed under this act. Alcoholic beverages which are consigned to a destination within this State shall be presumed to be for delivery or use within this State. Alcoholic beverages imported into this State contrary to the provisions hereof shall be seized by the board. Every person violating the provisions of this section shall be guilty of a misdemeanor. (Statutes 1937, ch. 758; operative July 1, 1937)."

"Sec. 49.2. Common or private carriers transporting alcoholic beverages into this State from without the State for delivery or use within this State must obtain the receipt of the licensed importer, distilled spirits manufacturer or distilled spirits manufacturer's agent for the alcoholic beverages so transported and delivered and, if the consignee refuses to give such receipt and show his license to the carrier, the carrier shall be relieved of all responsibility for delivering said alcoholic beverages. Where the consignee is not a licensed importer, distilled spirits manufacturer or distilled spirits manufacturer's agent or where the consignee refuses to give his receipt and show his license the carrier shall immediately notify the board at Sacramento giving full details as to the character of shipment, point of origin, destination and address of the consignor and consignee, and within ten days such alcoholic beverages shall be delivered to the board and shall be forfeited to the State of California. If any alcoholic beverages seized under the preceding section or forfeited under this section are sold by or under the direction of the board the common carrier's unpaid freight and storage charges accruing on the shipments of such alcoholic beverages shall be satisfied out of the proceeds of any sale made by the State after deducting the cost of such sale and any excise taxes accruing thereon. Every person violating the provisions of this section shall be guilty of a misdemeanor. (Statutes 1937, ch. 758; operative July 1, 1937.)"

32 The conclusions have been reiterated in Mahoney *v.* Joseph Triner Corporation, No. 761, this Term, decided May 23, 1938.

As territorial jurisdiction over the Park was in the United States, the State could not legislate for the area merely on account of the XXI Amendment.[33] There was no transportation into California "for delivery or use therein." The delivery and use is in the Park, and under a distinct sovereignty. Where exclusive jurisdiction is in the United States, without power in the State to regulate alcoholic beverages, the XXI Amendment is not applicable.[34]

Conclusion. The bill of complaint states that the defendants, the State officials, "assert that said Alcoholic Beverage Control Act of the State of California applies to complainant's operations within said Yosemite National Park; . . . that it is obligated to pay the fees and taxes imposed by said Act and is subject to the penalties thereof for the possession and sale of said beverages without compliance with the provisions of said Act." In the prayer of the bill, the complainant prays for an injunction restraining the defendants "from enforcing in any manner within the limits of Yosemite National Park, or in respect of transactions within said Park, the Alcoholic Beverage Control Act of the State of California." The final decree forbids entering upon the premises of complainant; seizing, impeding or interfering with any shipments to complainant in Yosemite National Park; from instituting any actions or proceedings in any court of law or equity for violations or alleged violations of said Alcoholic Beverage Control Act in respect of the importation, possession or sale in the Park; from requiring or demanding reports on the importation, possession or sale of said beverages; from enforcing in any manner within the limits of Yosemite National Park, or in respect of transactions within said Park, the Alcoholic Beverage Control Act of the State of California.

From the pleadings and decree it is clear that until now the controversy has turned not upon special provisions of the Act in question but upon its applicability as a whole. As in our judgment, as heretofore pointed out, the tax provisions are enforceable and the regulatory provisions unenforceable, it is necessary to reverse the decree and remand the cause to the District Court for a determina-

[33] Standard Oil Co. v. California, 291 U. S. 242.

[34] Compare Western Union Telegraph Co. v. Chiles, 214 U. S. 274; Yellowstone Park Transportation Co. v. Gallatin County, 31 F. (2d) 644.

tion by the Court in accordance with this opinion of the applicability of such sections of the Act as the State may threaten to enforce.

It is so ordered.

Mr. Justice McREYNOLDS is of opinion that the decree below should be reversed because as stated by counsel for appellants, "The acts of cession and acceptance reserved to the state the right to levy upon and collect from the appellee company the type of tax imposed by the Alcoholic Beverage Control Act." Also, that discussion should be confined to that point.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.